

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.

19 Inc., and The Tobacco Institute, Inc.,

Defendants.

22 DEPOSITION OF ULRICH G. V. HERTER

23 Volume I, Pages 1 - 204

24

25

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6 Project,' Bates 102391127-34 116
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1 P R O C E E D I N G S

2 (Witness sworn.)

3 ULRICH G. V. HERTER

4 called as a witness, being first duly
5 sworn, was examined and testified as
6 follows:

7 ADVERSE EXAMINATION

8 BY MS. WIVELL:

9 Q. Sir, would you please tell the ladies and
10 gentlemen of the jury your name.

11 A. Ulrich Herter.

12 Q. All right. Sir, is it correct that for the last
13 13 years you have been continuously employed by a
14 tobacco company owned by B.A.T Industries?

15 A. I joined B.A.T. -- B.A.T. Company in Germany in
16 January 1984.

17 Q. January 1984?

18 A. That's correct.

19 Q. What position did you hold then?

20 A. I was employed by B.A.T. Cigaretten Fabriken in
21 Germany on the marketing side.

22 Q. And that company is a wholly-owned B.A.T
23 Industries subsidiary?

24 A. That company was wholly-owned by a German
25 holding company, which then was owned by B.A.T

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1 Industries through other holding companies.

2 THE REPORTER: Off the record a moment,
3 please.

4 (Discussion off the record.)

5 BY MS. WIVELL:

6 Q. Sir, briefly what is your educational
7 background?

8 A. Well I went through school, through grammar
9 school in Germany for 13 years, and afterwards I
10 studied economics.

11 Q. You don't have any medical training?

12 A. No.

13 Q. You don't have any chemical training?

14 A. No.

15 Q. You're not a chemist by trade.

16 A. No.

17 Q. Now you said you joined the B.A.T. Cigaretten
18 Fabriken in 1984 in the marketing side. You
19 eventually became head of that company; didn't you?

20 A. I became chairman of the company, of the
21 managing board of that company, yes.

22 Q. When was that?

23 A. '87.

24 Q. Was your appointment approved by the B.A.T
25 Industries board?

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1 A. The process was you were appointed by the
2 supervisory board of the local company in Germany.

3 Q. But the B.A.T Industries board approved your
4 appointment; didn't it, sir?

5 MR. CORRIGAN: Object to the form.

6 A. I was appointed by the supervisory board of
7 B.A.T. Cigaretten Fabriken.

8 Q. I'm not sure you understand my question. You
9 may have been appointed --

10 A. I do understand your question and that is my
11 answer.

12 Q. All right. And your appointment was approved by
13 the B.A.T. board; wasn't it?

14 MR. CORRIGAN: Object to the form.

15 Q. B.A.T Industries board?

16 A. I don't think so.

17 Q. Now sir, you eventually were appointed to the
18 board of directors of B.A.T Industries.

19 A. That's correct.

20 Q. In 1990?

21 A. 1990. October 1990.

22 Q. And you were the first German ever to sit on the
23 board of B.A.T Industries; weren't you, sir?

24 A. I think so, yes.

25 Q. And you also became a member at one point in

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1 time of the Tobacco Strategy Review Team; didn't you?

2 A. That is correct.

3 Q. Now the Tobacco Strategy Review Team was a
4 committee set up by B.A.T Industries chairman, Sir
5 Patrick Sheehy; correct?

6 MR. CORRIGAN: Object to the form of the
7 question, use of the word "committee" when you know
8 it's not correct.

9 A. Can I have the question again, please?

10 Q. Certainly.

11 The Tobacco Strategy Review Team was a committee
12 set up by the B.A.T Industries chairman, Sir Patrick
13 Sheehy; right?

14 MR. CORRIGAN: Same objection.

15 A. I think so.

16 Q. And it later became known as the Tobacco
17 Strategy Review Team; didn't it?

18 MR. CORRIGAN: Object to the form of the
19 question.

20 A. I was appointed to the TSRT, the Tobacco
21 Strategy Review Team.

22 Q. I'm sorry. That later became the Tobacco
23 Strategy Review Group; didn't it?

24 A. The Tobacco Strategy Group, not Review Group.

25 Q. All right. Just so I'm clear here, the Tobacco

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1 Strategy Review Team name was changed to the
2 Tobacco --

3 A. Strategy Group.

4 Q. Thank you.

5 Now you became chair of the Tobacco Strategy
6 Review Team; didn't you, sir?

7 A. Yes.

8 Q. When was that?

9 A. I think --

10 I don't remember exactly the time, but I believe
11 it was when I became managing director tobacco of
12 B.A.T Industries P.L.C.

13 Q. Now sir, when did you become managing director
14 of tobacco for B.A.T Industries P.L.C.?

15 A. In July 1992.

16 Q. What were your responsibilities as managing
17 director of tobacco for B.A.T Industries?

18 A. To look after the tobacco interest -- interests
19 of B.A.T Industries P.L.C.

20 Q. Now at that time would it be fair to say that
21 B.A.T Industries had two major focuses, one being
22 tobacco and one being financial?

23 A. That is correct. Financial services.

24 Q. And among the financial services that B.A.T
25 Industries was responsible for was Farmers Insurance

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1 in the United States?

2 MR. CORRIGAN: Object to the form of the
3 question.

4 A. One of the companies which is part of the
5 financial-services side is Farmers Group in the
6 United States.

7 Q. Does the Farmers Group offer discounts to people
8 who don't smoke?

9 A. I don't know exactly, but I'd guess so, yes.

10 Q. Now have you discussed all of your
11 responsibilities as managing director of tobacco for
12 B.A.T Industries?

13 MR. CORRIGAN: Object to the form of the
14 question.

15 A. Can I have the question again, please?

16 Q. Yes.

17 Have you described all of your responsibilities
18 as managing director of tobacco for B.A.T
19 Industries?

20 MR. CORRIGAN: Same objection.

21 A. I think I have.

22 Q. All right. Now when I asked you what your
23 responsibilities as managing director of tobacco for
24 B.A.T Industries was, you said to look after the
25 tobacco interests of B.A.T Industries. What did you

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1 mean by that, sir?

2 A. B.A.T Industries P.L.C. is a holding company,
3 and when I joined it in July 1992 it was -- the
4 tobacco industry was split into four operating
5 groups, and it was my responsibility to issue
6 guidelines, which is typical for a holding company,
7 and then monitor performance against these
8 guidelines.

9 Q. What do you mean by "monitor performance against
10 the guidelines?"

11 A. I received reports from the operating groups,
12 and those reports contain financial information and
13 information about how many cigarettes were sold in a
14 specific time, month, year, and that is what I mean
15 by "monitor."

16 Q. Now you said that when you took over in 1992 you
17 coordinated the operations of four operating
18 companies?

19 A. I didn't say "coordinate."

20 Q. I'm sorry. Well did you coordinate the work of
21 four operating companies?

22 A. Coordinate in a strategic sense, yes.

23 Q. And those four operating companies included
24 Brown & Williamson, Souza Cruz, BATCO, and the German
25 company; right?

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1 A. That is correct.

2 Q. Now sir, in 1995 B.A.T Industries announced that
3 it had created a global tobacco company in the United
4 Kingdom to coordinate its tobacco activities; isn't
5 that true?

6 MR. CORRIGAN: Object to the question on
7 the grounds that it's beyond the scope of this
8 examination.

9 MS. WIVELL: Go ahead.

10 A. In 1996 British-American Tobacco (Holdings) was
11 created.

12 Q. And the purpose of that company was to provide
13 coordination globally for B.A.T Industries tobacco
14 companies; wasn't it, sir?

15 MR. CORRIGAN: Object to the question,
16 post-dates the complaint in this action, irrelevant.

17 THE WITNESS: Do I have to answer?

18 MR. WIVELL: Yes.

19 MR. CORRIGAN: Yes.

20 A. Okay. The purpose of that company is to
21 strategically coordinate the tobacco business of
22 British-American Tobacco (Holdings).

23 Q. Now sir, when you took over in 1992, the
24 purpose -- the person who had been responsible for
25 the duties that you assumed at that time was Sir

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1 Patrick Sheehy; wasn't it?

2 MR. CORRIGAN: Object to the form of the
3 question, presupposes the predecessor had exactly the
4 same duties.

5 A. My predecessor, as I understand, was not Sir
6 Patrick Sheehy because he was the chairman of
7 British -- of B.A.T Industries P.L.C. My
8 predecessor, I think, was Eric Bruell. Eric Bruell.

9 Q. Bruell.

10 Sir Patrick Sheehy retired from B.A.T Industries
11 as chairman when, sir?

12 A. I think in December 1995.

13 (Plaintiffs' Exhibit 691 was marked
14 for identification.)

15 BY MS. WIVELL:

16 Q. Sir, showing you what's been marked as
17 Plaintiffs' Exhibit 691, this is a document that
18 begins with the Bates number 300511915; right?

19 A. 300511915, correct.

20 Q. Now sir, have you ever seen this letter before?

21 A. No, I don't think so.

22 Q. All right. Why don't you take a moment to read
23 it to yourself.

24 MR. CORRIGAN: Off the record for a moment,
25 please.

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1 THE REPORTER: Off the record, please.

2 (Discussion off the record.)

3 A. Okay.

4 Q. Sir, you've now had the opportunity to read the
5 letter; right?

6 A. Yes.

7 Q. All right. And is it --

8 It is an August 13th, 1992 letter from R. E.
9 Thornton; right?

10 A. Yes.

11 Q. Now it says in the last paragraph -- or I'm
12 sorry. Strike that.

13 In the last paragraph it refers to you, sir;
14 doesn't it?

15 A. Yes.

16 Q. And it says, "Mr. Herter" -- I'm sorry, strike
17 that.

18 It says in part that it might be appropriate for
19 Professor Kakkar, the person who received the letter,
20 to meet you, and then says -- I'm sorry -- to meet
21 you; doesn't it?

22 A. Yes.

23 Q. All right. Then it goes on to say that you took
24 over all B.A.T. Tobacco Industries activities as of
25 July 1st.

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1 A. That's what it says, yes.

2 Q. All right. Did you take over responsibility for
3 all of the B.A.T. Tobacco Industries activities as of
4 July 1st as Mr. Thornton says?

5 MR. CORRIGAN: Object to the form.

6 A. I joined B.A.T Industries P.L.C. as an
7 employee -- as an employee on 1st July, as a managing
8 director tobacco, to strategically coordinate tobacco
9 activities.

10 Q. I understand that, sir, but I'm -- I'm asking
11 you: Was Mr. Thornton right when he said you took
12 over all B.A.T. tobacco activities as of July 1st?

13 MR. CORRIGAN: Object to the form of the
14 question.

15 A. I answered your question. I joined B.A.T
16 Industries as a managing director tobacco to
17 strategically coordinate.

18 Q. So he's right, then, in his description of your
19 activity?

20 MR. CORRIGAN: Objection, asked and
21 answered.

22 A. I joined as a managing director tobacco, I can
23 only repeat that, to strategically -- strategically
24 coordinate the tobacco activities of B.A.T Industries
25 P.L.C.

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1 Q. I understand that, sir, but that's not my
2 question. My question is: Was Mr. Thornton right in
3 his description of you as taking over all of B.A.T
4 Industries tobacco activities as of that time?

5 MR. CORRIGAN: Objection, asked and
6 answered.

7 A. Partly he is right, partly he is wrong.

8 Q. Okay. What is the part that is right?

9 A. The part that is right, that I took over as
10 managing director tobacco to -- to strategically
11 coordinate the activities of B.A.T Industries. It --
12 The sentence, as I read it, might suggest that I
13 would manage all tobacco activities, and in that part
14 it is wrong.

15 Q. What did you do to coordinate the activities?

16 MR. CORRIGAN: Object to the form of the
17 question. I believe the witness said strategic
18 coordinating. But you may answer if she declines to
19 rephrase.

20 A. I issued guidelines for the four operating
21 groups at that time, suggested these guidelines to
22 the CPC, later the CEC, which then suggested those
23 guidelines to the industry's board, B.A.T Industries
24 board, and then in the course of the year I would
25 monitor performance of the four operating groups

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1 against these guidelines.

2 Q. Anything else?

3 A. In the normal course of business the chairmen of
4 the operating groups, I would meet them, I would
5 discuss their business with them. And sometimes they
6 would ask for advice and I would give them advice.
7 But it was always clear that it was advice, it was
8 never an order; it was their decision to conduct
9 their business.

10 Q. Anything else that you did in your -- in your
11 role as the coordinator?

12 A. I would visit --

13 MR. CORRIGAN: Object to the form. You may
14 answer.

15 A. I would visit the operations around the globe to
16 make me familiar with their business.

17 Q. Anything else?

18 A. What do you mean by "anything else?"

19 Q. Well, any other activities that took up your
20 days?

21 A. I read reports, discussed issues with people on
22 the phone internally, externally. I traveled a lot.
23 We did a lot of acquisitions in those days in the --
24 the old Eastern Bloc. I would go there, explore
25 opportunities for investment, discuss that with

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1 governments and government agencies. I had a small
2 group which was looking for these -- for these
3 investments, evaluated them. I went through, with
4 them, through their suggestions, and then at the end
5 of the day recommended either to make that investment
6 or not make that investment. And that was always a
7 recommendation first to the CEC and later on to the
8 B.A.T Industries board.

9 Q. Now you used the phrase "CEC" a couple of
10 different times. What does that refer to?

11 A. That is the Chief Executive Committee.

12 Q. What is the Chief Executive Committee?

13 A. It is a committee of the B.A.T Industries P.L.C.
14 board, and it is made up of three people, the chief
15 executive, Mr. Martin Broughton, the finance director
16 of B.A.T Industries P.L.C., Mr. David Allvey, and
17 myself.

18 Q. Now was that committee also known as the CPC?

19 A. No, it was -- it -- what is the right word for
20 that? The CPC was before the CEC came into
21 existence.

22 Q. It was the -- the CPC --

23 A. It was the predecessor, yes.

24 Q. All right. I have --

25 A. It was the predecessor.

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1 Q. I have to warn you, sir, we can't talk over one
2 another. One of us has to talk at a time. Otherwise
3 the court reporter will become very anxious and get
4 mad. So I will try and not speak while you're
5 speaking if you will try and not speak while I'm
6 speaking. Okay?

7 A. I will try hard.

8 Q. Okay. Have you ever been deposed before?

9 A. No.

10 Q. All right. Just so we're clear, the Chairman's
11 Policy Committee was the predecessor committee to the
12 CEC; right?

13 A. Correct.

14 Q. All right. And the Chairman's Policy Committee
15 of B.A.T Industries -- I'm sorry, strike that.

16 The Chairman's Policy Committee was a B.A.T
17 Industries board committee; wasn't it?

18 MR. CORRIGAN: Object to the form. It's
19 B.A.T Industries, Ms. Wivell.

20 A. The CPC was a board committee of B.A.T
21 Industries P.L.C.

22 Q. All right. And the CPC had delegated authority
23 from the board to operate on behalf of the board of
24 directors on certain issues; right?

25 A. That is correct.

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1 Q. Now delegated authority is not something that
2 the ladies and gentlemen of the jury may understand.

3 What do you understand the phrase "delegated
4 authority" to mean?

5 A. Delegated authority means that, for example, we
6 could note investments up to a certain limit. If
7 that investment -- or if a specific investment was
8 higher than that limit, for example, then it had to
9 be referred to the full board of B.A.T Industries
10 P.L.C.

11 Q. That's just one example of the delegated
12 authority to the CPC; right?

13 MR. CORRIGAN: Objection. That's what he
14 testified to.

15 A. That is one example.

16 Q. There were other parts -- strike that.

17 There were other things that were delegated by
18 the B.A.T. board to the Chairman's Policy Committee;
19 isn't that right?

20 A. I think it is right, yes.

21 Q. What other things did you understand were
22 delegated by the board of B.A.T Industries to the
23 Chairman's Policy Committee?

24 A. To monitor the -- to monitor the performance of
25 the operations of B.A.T Industries, both tobacco and

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1 financial services.

2 Q. And that would include the operating company?

3 A. When I -- when I speak of performance, it is
4 performance of the operating companies.

5 Q. Including Brown & Williamson.

6 A. Correct.

7 Q. And including Cigaretten Fabriken in Germany.

8 A. Correct.

9 Q. Sir, did your travels ever take you to the
10 United States?

11 A. Yes.

12 Q. How often did you visit the United States in
13 your role as coordinator of the tobacco operating
14 companies?

15 MR. CORRIGAN: Object to the form.

16 A. My visits -- how many --

17 How many visits I paid to the United States?

18 Q. Approximately, yes.

19 A. I would have to consult my diary over the
20 years. I cannot tell you.

21 Q. There have been quite a number; haven't there?

22 A. There have been quite --

23 Yes.

24 MR. CORRIGAN: Object to the form.

25 A. There have been quite a number of visits, yes.

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1 Q. You have to wait until he's done, too. Only one
2 person can be taken down at a time.

3 And you have visited Brown & Williamson on
4 numerous occasions; haven't you, sir?

5 MR. CORRIGAN: Object to the form.

6 A. I have visited Brown & Williamson on several
7 occasions.

8 Q. In your capacity as a B.A.T Industries employee;
9 right?

10 A. In my capacity as managing director tobacco of
11 B.A.T Industries P.L.C.

12 Q. All right. And how soon after you became -- you
13 assumed that position did you visit B.A. -- Brown &
14 Williamson?

15 A. I cannot tell you.

16 Q. Within --

17 A. I cannot -- I cannot recall.

18 Q. All right. Well let me ask you this: You had,
19 I think you said, four major operating companies that
20 you were responsible for coordinating activities of,
21 and did you, within the first year after you assumed
22 that position, try to visit each one of those
23 operating companies?

24 MR. CORRIGAN: Object to the form.

25 A. I have to be more precise. I visited the

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1 operating groups definitely in my first year, and the
2 four operating groups were Brown & Williamson, were
3 B.A.T. Cigaretten Fabriken in Germany, Souza Cruz in
4 Brazil, and BATCO. BATCO was based in London, so
5 that was not a problem.

6 Q. Did you say BATCO?

7 A. I said BATCO, yes.

8 Q. I have to tell you, I have a little bit of a
9 hearing problem and you're a rather soft-spoken
10 gentleman, and I'm having a little trouble hearing
11 you. So if I ask you from time to time to repeat
12 something, it's not -- I'm not trying to be
13 difficult, I'm hear -- having a hearing problem.

14 Did you, while you were managing director of
15 B.A.T Industries tobacco interests, try and make at
16 least yearly visits to each one of the four operating
17 companies?

18 A. I would think so, yes.

19 Q. Were your visits more often than yearly?

20 A. In the case of B.A.T. -- B.A.T. Cigaretten
21 Fabriken in Germany, definitely, because I was member
22 of their supervisory board, and they had three board
23 meetings a year which I attended. Brazil, I would
24 guess once a year, maybe twice a year in the early
25 days, three times a year later on. Brown &

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1 Williamson, whenever I was asked to come there.
2 Later on I became member of their audit committee and
3 that met three, four times a year, so I visited --
4 I -- I went over to -- to participate in the audit
5 committee.

6 Q. Who appointed you to Brown & Williamson's audit
7 committee?

8 A. The board of Brown & Williamson.

9 Q. And you attended those audit committee meetings
10 in your capacity as a B.A.T Industries employee;
11 correct?

12 MR. CORRIGAN: Object to the form of the
13 question.

14 A. They appointed me because they knew me and
15 believed -- that is what I -- what I think -- that I
16 could make a contribution to that audit committee,
17 and -- and surely my position as managing director
18 tobacco B.A.T Industries P.L.C. will have played a
19 role in that.

20 Q. But you didn't become a Brown & Williamson
21 employee.

22 A. No.

23 Q. You still remained a B.A.T Industries employee;
24 right?

25 A. That's correct.

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1 Q. And did you say earlier that you became a B.A.T
2 Industries employee as of July 1st, 1992?

3 A. That is correct.

4 Q. And so your letterhead says B.A.T Industries on
5 it?

6 A. My letterhead says "Managing Director Tobacco,
7 B.A.T Industries P.L.C.," I believe.

8 Q. Now sir, we spoke a little bit earlier about the
9 change that was accomplished at the beginning of
10 January -- January 1st, 1996. Do you recall that?

11 A. Yes, we spoke about it.

12 Q. All right.

13 A. You mentioned that.

14 Q. Did your responsibilities change as of that
15 date?

16 MR. CORRIGAN: Object on the grounds that
17 it's irrelevant, post-dates the complaint.

18 A. In principle, not.

19 Q. Sir, showing you what's previously been marked
20 in this litigation as Plaintiffs' Exhibit 280, this
21 is a document that bears the Bates number or begins
22 with the Bates number 582302554; right?

23 A. Bates number 582302554, correct.

24 Q. And this is a news release entitled "News from
25 B.A.T Industries;" right?

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1 A. That's what it says, "News from B.A.T
2 Industries."

3 Q. This is a -- a press release that announces the
4 reorganization that took place as of January 1st,
5 1996.

6 A. I cannot detect whether it's a -- oh -- whether
7 it's a press release or not. I couldn't say that.
8 But it may be. Don't know.

9 Q. All right. Well let's put it this way: This is
10 an announcement from B.A.T Industries concerning that
11 change that we were just discussing which took place
12 January 1st, 1996.

13 A. Let me just read it.

14 Q. Certainly.

15 A. It is an announcement of the creation of
16 British-American Tobacco (Holdings) Limited from the
17 beginning of 1996, and gives the board of directors
18 and where it will be located.

19 Q. All right. As of today, are you the managing
20 director of British-American Tobacco (Holdings)
21 Limited?

22 A. I'm the managing director of British-American
23 Tobacco (Holdings) Limited.

24 Q. Have you been continuously since January 1st,
25 1996?

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1 A. I have been.

2 Q. And are you on the board of directors of
3 British-American Tobacco (Holdings) Limited?

4 A. Yes. If I am the managing director, I should be
5 on the board --

6 Q. Okay.

7 A. -- of that company.

8 Q. Now sir, it says here that -- strike that.

9 Why did you understand that this change was put
10 into place?

11 MR. CORRIGAN: Objection. As previously
12 stated, all of this took place long after this
13 lawsuit was filed, has no bearing on any of the
14 issues relating to B.A.T Industries.

15 You may answer.

16 A. What was your question exactly, please?

17 Q. Certainly.

18 Why did this change take place?

19 MR. CORRIGAN: Same objection.

20 A. We found it more appropriate to organize
21 ourselves in this way.

22 Q. Who is the "we" that you're referring to?

23 MR. CORRIGAN: Objection as previously
24 stated.

25 A. The "we" I referred to is that I have discussed

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1 these things with my colleagues on the CEC and with
2 the heads of the operating groups.

3 Q. But the decision was a decision made by the
4 B.A.T Industries board; wasn't it?

5 MR. CORRIGAN: Objection.

6 A. I think the process is slightly different. You
7 work up -- or work out a proposal, you discuss that
8 proposal with people concerned, and if you want to
9 formally establish a company, you have to go through
10 the B.A.T Industries board. That is one of -- part
11 of the delegated authority or duties within the
12 delegated authority.

13 Q. And it's true, isn't it, that the B.A.T
14 Industries board did approve this reorganization plan
15 that ended up in British-American Tobacco (Holdings)
16 Limited being responsible for the coordination of the
17 tobacco areas?

18 MR. CORRIGAN: Objection.

19 A. The B.A.T Industries board gave its consent
20 to -- to form this company, set it up.

21 Q. Had they not given their consent, this company
22 never would have been set up; right?

23 MR. CORRIGAN: Objection.

24 A. I haven't thought about that.

25 Q. But it definitely was proposed to and approved

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1 by the board.

2 MR. CORRIGAN: Objection.

3 A. It was proposed --

4 As I recall, it was proposed to the board, yes.

5 Q. And just so we're clear, you've been a board

6 member on the B.A.T Industries board since 1988;

7 haven't you, sir?

8 MR. CORRIGAN: Objection.

9 A. 1990.

10 Q. I'm sorry.

11 A. I'm a board member -- I'm a board member of the

12 B.A.T Industries P.L.C. since October 1990.

13 Q. Now sir, did you understand that one of the

14 purposes of setting up British-American Tobacco

15 (Holdings) Limited was to help establish a unified

16 culture for all of the tobacco operations?

17 MR. CORRIGAN: Objection on grounds

18 previously elaborated.

19 MR. FRANKEL: Object to the form as well.

20 A. That is what this letter or document says.

21 Q. Well, and did you understand that that -- strike

22 that.

23 Well it does say here that one of the purposes

24 was to help establish a unified culture from the

25 outset. Was that your understanding, too?

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1 MR. CORRIGAN: Object to the form and
2 object to the line of inquiry.

3 A. That is one -- was one of the intentions, yes.

4 Q. Okay. Now --

5 A. Culture. Yes.

6 Q. -- the -- the board of B.A.T. -- I'm sorry,
7 strike that.

8 The board of British-American Tobacco (Holdings)
9 Limited was also given the charge by the B.A.T
10 Industries board for improving the financial
11 performance of the various tobacco companies.

12 MR. CORRIGAN: Objection.

13 A. The purpose of a company is to be successful,
14 and successful includes financial performance.
15 However, British-American Tobacco (Holdings) is a
16 holding company, as the name says, and the financial
17 performance is really with the subsidiaries and
18 associates of that holding company. The holding
19 company receives dividends from those subsidiaries
20 and associates, and British-American Tobacco
21 strategically coordinates the tobacco business as
22 conducted by the subsidiaries and associates.

23 Q. Now sir, in your last answer you talked about
24 British-American Tobacco. You're talking about
25 British-American Tobacco (Holdings) Limited; aren't

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1 you?

2 A. That's correct.

3 Q. And you now call that British American Tobacco

4 for short?

5 A. British-American --

6 I should say British-American Tobacco (Holdings)

7 Limited, but for short British-American Tobacco.

8 Q. All right. Sir, could you turn to the second

9 page of Exhibit 280. There it says "The Board,"

10 meaning the board of British-American Tobacco Company

11 (Holdings) Limited, "is responsible for delivering

12 superior financial performance to B.A.T Industries

13 through," and then it lists a variety of things;

14 doesn't it?

15 MR. CORRIGAN: Object to the form. You're

16 just asking him to confirm part of page two? I

17 object. But you may go ahead.

18 MR. FRANKEL: You might have misspoke in

19 terms of the company name.

20 A. Let me just read it first.

21 Q. Let me rephrase the question because I think I

22 did misspeak, sir.

23 MR. CORRIGAN: The witness is reading the

24 document. Why don't you let him finish and then you

25 can rephrase.

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1 A. What was your question now?

2 Q. All right. Now on the second page of Exhibit
3 280 it says, "The Board," meaning the board of
4 British-American Tobacco (Holdings) Limited, "is
5 responsible for delivering superior financial
6 performance to B.A.T Industries through," and then it
7 lists a variety of things; doesn't it?

8 MR. CORRIGAN: Objection to the line of
9 inquiry.

10 A. Page two in essence starts -- or that paragraph
11 you were quoting starts, "The function of the centre
12 is to formulate global strategy and to give clear
13 direction to end markets." And then it goes on, "The
14 Board is responsible for delivering superior
15 financial performance to B.A.T Industries through" a
16 number of activities.

17 Q. And do you agree, sir, that British-American
18 Tobacco -- strike that.

19 Do you agree that British-American Tobacco
20 (Holdings) Limited is responsible for improving the
21 financial performance of B.A.T Industries tobacco
22 companies?

23 MR. CORRIGAN: Object to the form, object
24 to the line of inquiry.

25 A. All the tobacco companies are today owned

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1 through British-American Tobacco (Holdings), I think
2 that is correct, and it is the responsibility of the
3 board of British-American Tobacco (Holdings) to
4 strategically coordinate the tobacco businesses as
5 conducted through the subsidiaries and affiliates
6 with the objective to provide the ultimate
7 shareholder, British -- B.A.T Industries, P.L.C.,
8 with superior financial returns.

9 Q. In other words, you want to improve the bottom
10 line; don't you?

11 MR. CORRIGAN: Object to the form of the
12 question.

13 A. It is the obligation and the responsibility of
14 any board to improve the financial performance.

15 Q. And one of the things that the B.A.T Industries
16 board wants British-American Tobacco (Holdings) to do
17 is to make the tobacco group the number-one tobacco
18 company in the world.

19 MR. CORRIGAN: Object to the form --

20 Q. Right?

21 MR. CORRIGAN: -- and object to the line of
22 inquiry on grounds previously stated.

23 A. The board of British-American Tobacco (Holdings)
24 has discussed and agreed that this would be one of --
25 one of -- would be an objective, a vision to become

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1 the world's number-one tobacco company.
2 Q. Now one of the things that the B.A.T Industries
3 board made the board of British-American Tobacco
4 (Holdings) responsible for was the management of
5 consumer and regulatory affairs, including smoking
6 issues; isn't that true, sir?

7 MR. CORRIGAN: Objection as previously
8 stated, and as to form.

9 A. The board of British-American Tobacco (Holdings)
10 feels and felt and still feels that it has to manage
11 consumer and regulatory affairs, including smoking
12 issues, marketing and consumer freedoms, and excise.

13 Q. And they received that charge from the B.A.T
14 Industries board; didn't they, sir?

15 MR. CORRIGAN: Same objection.

16 A. No.

17 Q. Well it says here on -- in Exhibit 280, "The
18 Board is responsible for delivering superior
19 financial performance to B.A.T Industries through,"
20 and then it says at the very bottom, "the management
21 of consumer and regulatory affairs, including smoking
22 issues, marketing and consumer freedoms and excise;"
23 right?

24 A. That's what the paper says, yes.

25 Q. And isn't it true that part of the terms of

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1 reference for the British-American Tobacco (Holdings)
2 Limited was to manage worldwide smoking issues
3 relating to cigarettes?

4 MR. CORRIGAN: Objection, form, and line of
5 inquiry.

6 A. The board of British-American Tobacco (Holdings)
7 felt that managing consumer and regulatory affairs,
8 including smoking issues, marketing and consumer
9 freedoms and excise should be a -- a task fulfilled
10 by the company.

11 Q. What do you mean "by the company?"

12 A. British-American Tobacco (Holdings) --

13 Q. All right.

14 A. -- Limited.

15 Q. And this was part of the plan that was approved
16 by the B.A.T Industries board; wasn't it, sir?

17 MR. CORRIGAN: Objection, same grounds.

18 A. I'm not sure whether it was discussed in that
19 detail with the board.

20 Q. Well, based on your experience as a board member
21 of the board of B.A.T Industries P.L.C., you
22 understood when this new company was formed that one
23 of the responsibilities for the new company was to
24 manage worldwide smoking issues relating to
25 cigarettes.

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1 MR. CORRIGAN: Objection.

2 A. We as a board -- I mean the British-American
3 Tobacco (Holdings) board felt that responsibility,
4 yes.

5 Q. All right. But I'm asking if -- well -- this
6 document -- strike that.

7 This document, Exhibit 280, comes from B.A.T
8 Industries; doesn't it?

9 A. That is what it says.

10 Q. And it talks about the reasons why it was
11 thought that there was -- it was necessary to have a
12 unified culture within the tobacco groups; doesn't
13 it, sir?

14 MR. CORRIGAN: Object to the form, object
15 to the line of inquiry.

16 A. Let me just find where you were quoting from.

17 MR. CORRIGAN: Can you assist the witness,
18 counsel?

19 MS. WIVELL: I wasn't quoting. I was
20 asking a question.

21 MR. CORRIGAN: Well you were reading from
22 the document when you posed the question.

23 Q. Let me repeat my question.

24 Does this document set forth reasons why the
25 B.A.T Industries board decided to reorganize its

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1 worldwide tobacco business?

2 MR. CORRIGAN: Object to the form, object
3 to the line of inquiry.

4 If you need to review the document prior to
5 answering, you may do so.

6 MR. FRANKEL: Also mischaracterizes the
7 witness's prior testimony.

8 A. The documents -- document just informs that
9 British-American Tobacco (Holdings) Limited was set
10 up on January 1st, 1996, and it gives detail as far
11 as the board composition is concerned, and, as
12 discussed, says what the board is responsible for --
13 basically for delivering superior financial
14 performance to the ultimate shareholder, B.A.T
15 Industries, through a number of activities.

16 Q. And those activities are listed on the second
17 page; aren't they?

18 A. They are listed, yes.

19 Q. And one of the -- the reasons for this
20 reorganization was so that all of the tobacco
21 company -- companies would pull together as one
22 single-minded business pursuit; right?

23 MR. CORRIGAN: Objection. The witness has
24 already given you the reasons.

25 MR. BEZANSON: Object to the form.

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1 A. We felt organizing ourselves in that way would
2 enable us over a long period to become the world's
3 number-one tobacco business again, which we have been
4 in the past, and that we would be able to deliver
5 superior financial performance to B.A.T Industries.

6 Q. Well sir, are you denying that it was one of the
7 objectives of this reorganization that the tobacco
8 industries would -- would work as one single-minded
9 business pursuit?

10 MR. CORRIGAN: Objection to the form,
11 objection to the line of inquiry.

12 A. Can I have the exact question again?

13 Q. Yes, sir.

14 Are you denying that it was one of the
15 objectives of this reorganization that the tobacco
16 industries would work as one single-minded business
17 pursuit?

18 MR. CORRIGAN: Same objection.

19 A. I have described what the intention was, and
20 that was my answer to your question.

21 Q. Sir, could you turn to the last page of Exhibit
22 280, to the last paragraph above the stars. There is
23 a comment from Martin Broughton there; correct?

24 A. That is a comment from Mr. Martin Broughton,
25 yes.

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1 Q. And what was his position as of January 1st,
2 1996?

3 A. He was and still is the chief executive of B.A.T
4 Industries P.L.C.

5 Q. All right. And the chairman of B.A.T Industries
6 P.L.C. said -- or is quoted here in part as saying,
7 "And in order to secure that future, we are asking
8 you to pull together as one business in single-minded
9 pursuit of no less an objective than global
10 leadership of the world tobacco market;" right?

11 MR. CORRIGAN: Objection to the form.

12 You're simply asking him to --

13 A. Mr. Martin --

14 MR. CORRIGAN: -- read the document. It's
15 not necessary.

16 MR. FRANKEL: You also --

17 MS. WIVELL: Excuse me. All you have to
18 say is "objection." I'm going to object to any
19 speaking objection.

20 MR. CORRIGAN: Don't interrupt. Don't
21 interrupt.

22 MS. WIVELL: I would appreciate it if you
23 didn't interrupt me.

24 MR. CORRIGAN: You just interrupted Mr.
25 Frankel.

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1 MS. WIVELL: I'm sorry. I thought he was
2 done.

3 MR. CORRIGAN: Let's do it orderly. Let
4 him finish and then --

5 MS. WIVELL: Excuse me, I'm not done.

6 I object to speaking objections. The court is
7 clear in its order that all you have to do is say
8 "objection," and that one objection speaks for
9 everybody. And I'm hearing two and three lawyers
10 taking up my deposition time, and if this goes on,
11 I'm calling the court in Minneapolis.

12 MR. FRANKEL: Ms. Wivell, I was merely
13 pointing out that you misspoke again as to the
14 position of Mr. Broughton. If -- if you don't want
15 us to point out when you misspeak, that's fine, but
16 for clarity of the record Mr. Broughton is not the
17 chairman, as you said in your question.

18 MR. CORRIGAN: Okay. If you want to
19 rephrase, let's rephrase.

20 MS. WIVELL: I'll rephrase the question.

21 BY MS. WIVELL:

22 Q. And the chief executive officer of B.A.T
23 Industries is quoted here, in part, as saying, quote,
24 "In order to secure the future, we are asking you to
25 pull together as one business in single-minded

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1 pursuit of no less an objective than global
2 leadership of the world tobacco market;" close quote;
3 right?

4 MR. CORRIGAN: Same -- same objection as
5 previously stated.

6 A. What you read is correct. It is the second
7 sentence of a quote of Mr. Martin Broughton as the
8 chief executive officer of B.A.T Industries P.L.C.

9 Q. And did you understand at the time this
10 reorganization took place that B.A.T Industries was
11 asking all of its tobacco businesses to pull together
12 as one business in pursuit of the goal of becoming
13 the world's leading cigarette manufacturer?

14 MR. CORRIGAN: Objection, witness has
15 already given you his understanding, and also
16 objection to the line of inquiry.

17 A. What I understand is that Mr. Martin Broughton
18 was asking us to pull together as one business in
19 single-minded pursuit of no less an objective than
20 global leadership of the world tobacco market, as
21 stated in this quote.

22 Q. And you understood that that was one of your
23 charges as managing director of this new entity;
24 right?

25 MR. CORRIGAN: Objection to the form and to

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1 the line of inquiry.

2 A. I understand that as a challenge, and this
3 challenge is not only being met by the managing
4 director of British-American Tobacco (Holdings), but
5 by the whole board and by the people working for the
6 board.

7 Q. And all of the other tobacco companies like
8 Brown & Williamson.

9 MR. CORRIGAN: Same objection.

10 A. It is -- it is a charge of British-American
11 Tobacco (Holdings) Limited.

12 Q. Now the board of British-American Tobacco
13 (Holdings) Limited includes the chair and CEO of --
14 of Brown & Williamson; doesn't it?

15 A. It includes Mr. -- Mr. Brookes as a board
16 director, and Mr. Brookes is chief executive of Brown
17 & Williamson.

18 Q. Now sir, how many cigarette manufacturing
19 companies are under the strategic coordination of
20 British-American Tobacco (Holdings)?

21 MR. CORRIGAN: Object to the line of
22 inquiry. This is still a couple of years after the
23 lawsuit was filed, has no bearing on the issues that
24 need to be decided by the trier of fact.

25 You may answer.

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1 MR. BEZANSON: Object to the form.

2 A. I can't give you the exact number, I would have
3 to look that up, but it is quite a number of
4 companies, subsidiaries, around -- around about --

5 Q. All right. Can you give us an approximate
6 number of companies?

7 MR. CORRIGAN: Same objection.

8 A. Don't know exactly. Hundred, maybe less, maybe
9 more.

10 MR. CORRIGAN: I believe he said a hundred
11 more or less.

12 THE WITNESS: Yeah.

13 Q. I'm sorry, because I completely missed that. I
14 couldn't hear what you were saying.

15 A. Maybe --

16 I said maybe a hundred, maybe less, maybe more.

17 Q. Approximately how many cigarettes were produced
18 last year by B.A.T Industries cigarette manufacturers
19 under your responsibility?

20 MR. CORRIGAN: Objection. The number of
21 cigarettes produced last year has no relevance to
22 this case.

23 MR. BEZANSON: Object to the form.

24 A. The subsidiaries and affiliates of
25 British-American Tobacco (Holdings) Limited

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1 last year -- that is 1996 -- may have
2 produced/manufactured close to 700 billion.

3 Q. Seven hundred billion with a b?

4 A. With a b.

5 Q. All right. Sir, what was your salary last year?

6 A. My salary --

7 My salary was 440,000 -- is that correct? --

8 440,000 pounds, my salary.

9 Q. All right.

10 A. And I receive on top of that a bonus.

11 Q. What was the bonus?

12 A. Don't know exactly, but you can read that
13 because it is published, published information in the
14 reports of account of B.A.T Industries P.L.C.

15 Q. Now it was in excess of your actual salary;
16 wasn't it, sir?

17 A. (Nodding.)

18 Q. You have to answer out loud.

19 A. The bonus was in excess of my salary? No, it
20 wasn't.

21 Q. Give us an approximation of what your bonus was
22 then.

23 A. Maybe it was 30 percent. A third of my salary
24 approximately. Don't know exactly. Don't know the
25 exact number.

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1 Q. Has your salary been higher in years past than
2 440,000 pounds?

3 A. My salary has never been higher than that.

4 Q. Now sir, in addition to the salary and bonus you
5 received last year, did you receive any other
6 benefits?

7 A. I have a company car.

8 Q. Anything else?

9 A. I think the company pays for my -- or part of my
10 medical insurance.

11 Q. Could you --

12 A. I get stock options.

13 Q. Have you exercised your stock options?

14 A. Not all of them. Part. Part of them.

15 Q. How much -- I'm -- strike that.

16 What company do you have stock options in?

17 A. B.A.T Industries P.L.C.

18 Q. How much B.A.T Industries P.L.C. stock do you
19 own?

20 A. Just published information. I don't -- don't
21 recall. Maybe -- I have to guess, 17,000. 15,000,
22 17,000 shares.

23 Q. Approximately how much is a share of B.A.T
24 Industries worth these days?

25 A. Just over -- just over five pounds a share.

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1 Q. In addition to --

2 A. But that is published information, so we don't
3 have to guess.

4 Q. All right. In addition to your salary, bonus,
5 stock options, does B.A.T Industries pay into a
6 retirement fund for you?

7 A. Yes.

8 Q. Do you know the amount that they pay in on an
9 annual basis?

10 A. I don't know exactly the amount. But again,
11 that is published information. You can read that,
12 and we can make that available through the report of
13 accounts.

14 Q. Sir, do you also receive free cigarettes?

15 A. I do receive free cigarettes.

16 Q. And you are a smoker, sir; aren't you?

17 A. I am a smoker.

18 MS. WIVELL: Why don't we take a break.

19 MR. CORRIGAN: Fine. I was just going to
20 recommend that.

21 THE REPORTER: Off the record, please.

22 (Recess taken.)

23 BY MS. WIVELL:

24 Q. Sir, a little while ago I asked you about your
25 salary and you said you thought last year that you

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1 made approximately 440,000 pounds in salary.

2 Approximately what is that in American dollars?

3 A. Six hundred -- 440 --

4 Six hundred sixty, seven hundred thousand U.S.
5 dollars.

6 Q. Around 700,000 U.S. dollars.

7 A. That's what --

8 MR. CORRIGAN: I think he said 660 to 700.

9 A. Six sixty. Depends on the exchange rate.

10 Q. Just so we're clear here, then, based on your
11 rough calculations, in U.S. dollars last year you
12 made between 660 and 700 thousand dollars just in
13 salary; right?

14 A. Just in salary.

15 Q. And that doesn't count the bonus of
16 approximately one-third; right?

17 A. That's correct.

18 Q. All right. Now sir, when you became the
19 strategic coordinator for the tobacco activities of
20 B.A.T Industries in 1992, what did you do to learn
21 about the various companies like Brown & Williamson
22 that were under that area of responsibility?

23 MR. CORRIGAN: Object to the form of the
24 question.

25 A. What I did was, when I joined B.A.T Industries

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1 as managing director tobacco on 1st July 1992, I made
2 myself familiar with the company plans of the four
3 operating groups, including Brown & Williamson.

4 Q. What do you mean by "company plans?"

5 A. The company plan of an operating group sets out
6 what the company or the operating group wants to
7 achieve in the following year and the -- and two
8 further years ahead, so it is a three-year company
9 plan.

10 Q. All right. Now you were not a stranger to Brown
11 & Williamson when you took over this position on July
12 1st, 1992; were you?

13 A. I knew --

14 MR. CORRIGAN: Object to the form.

15 A. I knew Brown & Williamson as a company in my
16 capacity. As a chairman of the German company we
17 had -- we held licenses for various brands Brown &
18 Williamson was owning, and within the license
19 contracts there are certain duties we as the receiver
20 of the license had -- when I say "we," I meant the
21 German company -- and therefore I had to meet with
22 certain people of Brown & Williamson.

23 Q. Well you also met with the number one -- your
24 corresponding number ones from all of the other
25 tobacco companies at the annual yearly meeting of the

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1 chief executive officers; didn't you?

2 A. There was no, as I -- I --

3 As I recall, there was no annual meeting of the
4 chief executive officers of the operating -- of the
5 operating groups.

6 Q. Well are you familiar with the phrase "CAC?"

7 A. I'm familiar with that.

8 Q. What was the CAC?

9 A. It was --

10 The CAC, I think, stands for Chairman
11 Advisory -- C, the last C -- Conference I believe.

12 Q. All right. And --

13 A. And I participated in that once. Have to recall
14 exactly when it was. I think it was in 1989, maybe
15 '88. I don't know exactly.

16 Q. Now the first C stands for Chairman, and that

17 was --

18 A. Chairman Advisory --

19 Q. You have to let me finish, sir.

20 A. Oh, sorry. Sorry. I'm very sorry.

21 Q. Okay. The first C stands for Chairman, and that
22 was -- refers to chairman of B.A.T Industries;
23 doesn't it?

24 A. The first --

25 MR. CORRIGAN: Object to the form of the

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1 question. Sorry.

2 A. The first C stands for Chairman, and that is the
3 chairman of B.A.T Industries P.L.C.

4 Q. Who else -- I'm sorry, strike that.

5 You attended your conference -- the conference
6 in 1989 of the CAC.

7 A. Or in 1988.

8 Q. All right. And you attended in your capacity as
9 CEO of the German subsidiary, right?

10 A. I attended in my capacity as the chairman of the
11 German holding company.

12 Q. Ah. Okay.

13 Now who else attended?

14 A. The board members of B.A.T Industries at that
15 time, both executive and non-executive, and the
16 chairmen of the operating groups.

17 I have to explain that in those days, '88 or
18 '89, B.A.T Industries operating groups were not only
19 involved in tobacco and financial services, as
20 today -- as today, but in other businesses as well,
21 and as chairman of the German holding company I was
22 responsible for the tobacco side on the one hand, but
23 also for the retailing business the German holding
24 company had and the plastic molding business the
25 German company had. Yes.

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1 Q. There were also representatives of Brown &
2 Williamson at the CAC conference you attended.

3 A. There was a representative of BATUS.

4 Q. Who was that?

5 A. I have to remember the name of the chairman of
6 BATUS.

7 Can't -- can't recall the name right now.

8 Q. Now sir, you told us earlier that you had become
9 a member of the Tobacco Strategy Review Team; right?

10 A. That is correct.

11 Q. You had become familiar with Brown &
12 Williamson's activities through your -- your seat on
13 the Tobacco Strategy Review Team; isn't that true?

14 MR. CORRIGAN: Object to the form.

15 A. I got more familiar with Brown & Williamson
16 through my membership of the Tobacco Strategy Review
17 Team, but I had contact, as I described them earlier,
18 with executives from Brown & Williamson and employees
19 of Brown & Williamson's before in my capacity as
20 chairman of the German cigarette company because we
21 were holding licenses from Brown & Williamson for
22 some of their brands.

23 Q. Now sir, I guess -- strike that.

24 Would it be fair to say that from the time you
25 joined Cigaretten Fabriken in Germany in 1994, you

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1 had interaction from time to time with Brown &
2 Williamson personnel on a variety of different
3 levels?

4 MR. CORRIGAN: Object to the form and to
5 the breadth.

6 A. I had contacts with various people from Brown &
7 Williamson if and when it was necessary in relation
8 to the licensed brands.

9 Q. All right. But also it -- it would be fair to
10 say you had interaction with them in your role as the
11 Tobacco Strategy Review Team member; right?

12 A. That was later.

13 Q. All right. But it's true that you did have
14 interaction with Brown & Williamson personnel then.

15 MR. CORRIGAN: Object to the form.

16 A. With -- with the TSRT I had contact with my
17 colleague, Mr. Pritchard.

18 Q. Who was then CEO of Brown & Williamson; right?

19 A. That is correct.

20 Q. Now you also were a member of the B.A.T
21 Industries board and became familiar with Brown &
22 Williamson's business in that capacity; didn't you,
23 sir?

24 MR. CORRIGAN: Object to the form.

25 A. In my capacity as a board member from October

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1 1990, I became more familiar with Brown & Williamson
2 operations through reports which were submitted to --
3 to the board and received by the board members, and
4 by the report Mr. Pritchard gave, he was a member of
5 the B.A.T Industries P.L.C. board as well, when he
6 reported on his business.

7 Q. Now in the --

8 Would it be fair to say that in these various
9 different capacities that we've talked about, you
10 also learned about BATCO and the work it did?

11 MR. CORRIGAN: Object to the form.

12 A. BATCO, very much the same as with Brown &
13 Williamson: first contact in my capacity as a
14 marketing director, later the chairman of the
15 managing board of B.A.T. Cigaretten Fabriken for
16 license agreements and through conferences, later on
17 as a member of the TSRT, as described in relation to
18 Brown & Williamson, and later on as a board member of
19 B.A.T Industries P.L.C.

20 Q. And ultimately --

21 A. The chairman -- I hadn't finished.

22 Q. I'm sorry.

23 A. The chairman of BATCO was a member of the B.A.T
24 Industries board as well.

25 Q. And also eventually you learned about BAT --

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1 what BATCO did in your -- because it was part of your
2 responsibilities as the managing director of the
3 tobacco business; right?

4 MR. CORRIGAN: Object to the form.

5 A. I learned about the -- about the operations of
6 BATCO more, of course, when I became managing
7 director of B.A.T Industries P.L.C., managing
8 director tobacco to be precise.

9 Q. Now you knew or you learned -- strike that.

10 You learned that BATCO had a research and
11 development facility at Southampton; didn't you?

12 MR. CORRIGAN: Object to the form.

13 A. I know that as part of the BATCO Group there was
14 a research facility in Southampton. But BATCO in
15 essence is also a holding company, and whether the
16 research facility is directly owned by the holding
17 company, BATCO, or through a subsidiary, I don't
18 know.

19 Q. All right. You understood that that research
20 facility that -- strike that.

21 There is a research facility located at
22 Southampton; right?

23 A. That is correct.

24 Q. And it's been there for quite a number of years;
25 hasn't it?

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1 A. That's what I understand, yes.

2 (Plaintiffs' Exhibit 692 was marked
3 for identification.)

4 BY MS. WIVELL:

5 Q. Sir, showing you what's been marked as
6 Plaintiffs' Exhibit 692, the first page of this
7 document bears the Bates number 101435143; right?

8 A. 101435143, correct.

9 Q. All right. Now Exhibit 692, if you take a look
10 at the third page, is a report of a committee
11 concerning research and development; right?

12 MR. CORRIGAN: Well let me object --

13 A. Which -- what is page --

14 MR. CORRIGAN: -- to form.

15 A. -- three, please?

16 Q. The third page of the exhibit.

17 A. This one is page one?

18 Q. Yes.

19 A. Okay. Page three is headed "THE PILOT COMMITTEE
20 CONSISTING OF," and then a few names, Mr. Stewert,
21 Mr. Adair, Mr. Grew, Mr. Schreiber - Secretary,
22 "presents to Mr. Wells and Mr. Ridley their Report on
23 Development and Research."

24 Q. Now sir, this document at the bottom bears the
25 date 1st March 1954; right?

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1 A. Date is 1st March 1954.

2 Q. Now --

3 A. Right.

4 Q. -- that was before your time with B.A.T
5 Industries; right?

6 A. That was at a time when I was still at school.

7 Q. All right. Now keeping that in mind, I'd like
8 you to turn to the page that ends with Bates number
9 147 and read it to yourself, please.

10 A. The whole page?

11 Q. Yes, sir.

12 A. I've read it.

13 Q. Now, sir, it says in the first paragraph, in
14 part, "The accent on research is increasing, and the
15 need for it in our particular industry is daily
16 becoming more and more obvious."

17 Then it goes on to say, "This is not a
18 proposition of building a new factory; it is not a
19 proposition of establishing a new department, it is
20 something much wider; it goes down to the roots of
21 our industry to ensure that we know more about our
22 products...." Have I read it correctly so far?

23 A. You have read it correctly.

24 Q. Let me ask you this: Keeping in mind that you
25 were --

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1 A. But that is not --

2 Oh, I'm sorry to interrupt you. It is not the
3 full page. You quoted part of the page.

4 Q. I understand.

5 And keeping that in mind, sir, and also keeping
6 in mind the fact that you weren't there in 1954 or
7 '51 when this document was written --

8 A. '54.

9 Q. '54.

10 -- let me ask you this: From the time that you
11 first became involved in any company associated with
12 B.A.T Industries, was it your understanding that it
13 was important to the B.A.T Industries companies to
14 know as much as they could about their product?

15 MR. CORRIGAN: Object to the form of the
16 question. Also object to the use of the document
17 since the question could have been posed without
18 reference to the document.

19 A. It is essential for all companies, not only
20 tobacco companies, but manufacturing companies, that
21 they have a research and development department or
22 whatever you call it, facility, and it is essential
23 that all manufacturers, not only tobacco
24 manufacturers, know about their products.

25 Q. Why is that, sir?

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1 A. Because you should know what you are selling.
2 Q. And from the time that you joined for the first
3 time a B.A.T Industries associated company, was there
4 a sense that the tobacco companies within B.A.T
5 Industries wanted to know what their product -- know
6 everything they could about the product they were
7 selling?

8 MR. CORRIGAN: Object to the form.

9 A. I understood when I joined B.A.T. Cigaretten
10 Fabriken in Germany, which also had a research
11 department, that -- and this research department,
12 research and development department, I must say, for
13 example, looked after the quality of the cigarettes,
14 physical, and also as far as, let's say, tar and
15 nicotine is concerned, because in those days in
16 Germany we were obliged to publish these figures on
17 the pack, so we had to make sure within the companies
18 that what we published was correct, and my
19 understanding was -- was that research and
20 development would increase the knowledge about the
21 product, all aspects of the product.

22 Q. Well, did the B.A.T Industries tobacco companies
23 want to know -- want to make a safer product?

24 MR. CORRIGAN: Object to the form of the
25 question.

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1 A. The operating companies or operating groups are
2 operating in a competitive environment, and in order
3 to survive or be successful in a competitive
4 environment you have to make or produce the product
5 which is demanded by the consumers.

6 Q. And did you understand consumers wanted a safer
7 product?

8 MR. CORRIGAN: Object to the form of the
9 question.

10 A. Consumers want a product which satisfies their
11 aspirations.

12 Q. What do you mean by that?

13 A. That the product has a brand name, that the
14 design of the package which contains the product
15 itself is attractive and liked by them, that the
16 product itself satisfies their taste aspirations, and
17 that the communication going along with the brand
18 again meets their aspirations.

19 Q. Well did you understand that consumers were
20 looking for a safer cigarette?

21 MR. CORRIGAN: Objection.

22 A. The consumers were looking for a -- not for a
23 product or not a brand, because there are many brands
24 on the market, and they are looking for a brand which
25 satisfies their aspirations.

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1 Q. Well sir, isn't it true that you did know that
2 consumers were looking for a safer cigarette?

3 MR. CORRIGAN: Objection to the form.

4 A. Could you define, first of all, what you mean by
5 "a safer cigarette?"

6 Q. Safer cigarette by -- meaning lower biological
7 activity.

8 MR. CORRIGAN: Objection to the form.

9 A. I'm not -- I'm not sure that the consumer would
10 understand that term.

11 Q. Well sir, isn't it true that one of the reasons
12 that the Southampton research facility was
13 established was to try and create products which
14 would be biologically less hazardous?

15 MR. CORRIGAN: Objection to the form of the
16 question, asking the witness to speculate as to what
17 objectives existed in 1954.

18 A. The document says that the department was
19 established to "make better use of existing materials
20 and processes" and to "know more about our products."

21 Q. And in knowing more about the products, the
22 cigarettes that were being produced, isn't it true
23 that one of the reasons the Southampton facility was
24 established was to try and make a safer cigarette?

25 MR. CORRIGAN: Objection, asking the

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1 witness to put himself into the shoes of people who
2 established a facility in 1954, when he was still in
3 school.

4 MS. WIVELL: And I'm going to object.

5 That's the second time in a row to one of my
6 questions you violated the court order, and sir, I
7 will be calling the court as soon as we get time
8 in -- the court in Minneapolis if this continues.

9 I'm putting you on notice.

10 MR. CORRIGAN: You have incorrectly
11 perceived the thrust of the court order. It has not
12 been violated.

13 MS. WIVELL: All you need to say, sir, is
14 "objection." That's fine.

15 MR. CORRIGAN: Objection repeated.

16 Do you have the question in mind?

17 A. I can only --

18 In order not to speculate, I can only take what
19 is written in this document, and I neither -- neither
20 know the people who wrote the document, so I have to
21 take it at face value, if that is the correct English
22 expression.

23 Q. Sir, you learned --

24 MR. CORRIGAN: Had you finished your
25 answer?

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1 THE WITNESS: I finished.

2 Q. You learned that -- strike that.

3 You learned when you joined Cigaretten Fabriken
4 that various members of the tobacco group within
5 B.A.T Industries had research agreements; didn't you?

6 MR. CORRIGAN: Object to the form.

7 A. I learned when I was with B.A.T. Cigaretten
8 Fabriken that B.A.T. Cigaretten Fabriken was paying
9 fees for -- on the basis of a research agreement.

10 Q. Sir, you understood -- I'm sorry, strike that.

11 You learned when you joined Cigaretten Fabriken
12 that various of the tobacco companies within B.A.T
13 Industries had written agreements in which they
14 agreed to share their research with one another.

15 MR. CORRIGAN: Object to the form.

16 A. What I learned when I joined B.A.T.

17 Cigaretten -- or in the course of -- after I had
18 joined B.A.T. Cigaretten Fabriken, that B.A.T.
19 Cigaretten Fabriken had an agreement with -- I think
20 it was BATCO.

21 Q. And did you also in the course of time learn
22 that Brown & Williamson had research agreements with
23 BATCO?

24 MR. CORRIGAN: Same objection.

25 A. Much later.

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1 Q. But you did learn it; didn't you?

2 A. Yes.

3 Q. Okay.

4 A. The answer is yes.

5 Q. And one of the purposes of those research
6 agreements was to be able to share research among and
7 between the various tobacco companies within the
8 B.A.T Industries group; right?

9 MR. CORRIGAN: Object to the form of the
10 question.

11 A. I think the essence of the research agreement
12 which you pay for is that the research unit provides
13 services to those who pay for it.

14 Q. And services included providing the results of
15 research that had been done; right?

16 MR. CORRIGAN: Object to the form.

17 A. Results of the research, yes.

18 Q. For example, Southampton might do research,
19 write a report, and because of these pooling or
20 sharing agreements, that report would be sent to
21 Cigaretten Fabriken and also to Brown & Williamson;
22 wouldn't it, sir?

23 MR. CORRIGAN: Object to the form of the
24 question.

25 A. I -- I guess there were reports on certain

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1 research, and that was sent to those operating
2 companies who were part of that agreement.

3 Q. Counsel made an objection. I'm going to try to
4 meet his objection by rephrasing the question.

5 For example, sir, Southampton might do research
6 and write a report, and because of the pooling
7 agreement or sharing aagreement, that report would be
8 sent to B.A.T. Cigaretten Fabriken in Germany;
9 right?

10 MR. CORRIGAN: Object to the form.

11 A. Might have been sent, yes.

12 Q. All right. And because of -- strike that.

13 And Southampton would do research, write a
14 report, and because of the sharing agreement, it
15 would send that report to Brown & Williamson;
16 wouldn't it, sir?

17 MR. CORRIGAN: Same objection.

18 A. Possible.

19 Q. Well sir, you've seen reports that were shared
20 through -- among -- strike that.

21 You have seen reports which originated at
22 Southampton, at the research facility, which were
23 sent to Brown & Williamson as well as Cigaretten
24 Fabriken; right?

25 MR. CORRIGAN: Objection, lack of

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1 foundation.

2 A. I don't -- sorry.

3 I don't recall whether I have seen research
4 reports from -- originating in Southampton which were
5 sent to Brown & Williamson, for example, but --

6 I'm not even sure that I have seen a report
7 coming out of Southampton in B.A.T. Cigaretten
8 Fabriken. I just don't recall.

9 Q. Sir, showing you what's been previously marked
10 in this litigation as Exhibit 282, this is a pooling
11 of research expenses agreement dated January 18th,
12 1961 between Brown & Williamson and BATCO; correct?

13 A. It says 18th January, 1961, "Pooling of
14 Research -- Research Expenses," and then I would have
15 to read the whole page to understand what it says.

16 Q. All right. For the record, before you do that,
17 it begins with the Bates number 680503130, and
18 there's also a second Bates number BWMN00015426;
19 right?

20 A. Bates number 680503130, and second number
21 BWMN00015426.

22 Q. Why don't you take a moment and read the
23 document, sir.

24 A. I've read it.

25 Q. All right. You've read Exhibit 282? You have

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1 read Exhibit 282?

2 A. I have read Exhibit 282, yes.

3 Q. Okay. Now --

4 A. I had to find the number.

5 Q. -- it talks in this document about the
6 coordination of research centers; doesn't it, sir?

7 A. As I understand the document, it is a -- it was
8 a project to make best use of resources, and
9 therefore a great part of the document talks about on
10 which basis these costs will be shared.

11 Q. All right. And the costs that are being shared
12 are the costs of research; right?

13 MR. CORRIGAN: Object to the form. My
14 grounds, Ms. Wivell, is you're presupposing the costs
15 were in fact shared where this document appears to be
16 either a draft or -- or something else. We haven't
17 established that they were in fact shared in the
18 fashion described in the document.

19 A. Can I have your question again, please?

20 Q. And the costs that are discussed as being shared
21 are the costs of research; right?

22 MR. CORRIGAN: Repeat my objection.

23 A. As I understand it, it was the cost for research
24 and development.

25 Q. And sir, you understood when you joined B.A.T.

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1 Cigaretten Fabriken that indeed there was an aim
2 throughout the B.A.T Industries tobacco companies to
3 try and coordinate research activities.

4 MR. CORRIGAN: Object to the form.

5 A. When I joined B.A.T. Cigaretten Fabriken I
6 didn't have that understanding.

7 Q. All right. You eventually developed that
8 understanding, though; didn't you, sir?

9 MR. CORRIGAN: Same objection.

10 A. I developed the understanding that certain
11 projects in order to avoid duplication were assigned
12 to certain research facilities, and these -- and the
13 results of these projects were made available to
14 other operating groups.

15 Q. And by "other operating groups," you mean the
16 tobacco companies within the B.A.T Industries group.

17 MR. CORRIGAN: Object to the form.

18 A. Shared with the other research centers of the
19 operating groups, which were Souza Cruz, Brown &
20 Williamson, B.A.T. Cigaretten Fabriken, and BATCO.

21 Q. And sir, you did understand that the costs for
22 the research that was shared research was paid by
23 those companies that you just mentioned.

24 MR. CORRIGAN: Object to the form.

25 A. That certain costs, I'm not sure whether all

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1 costs, were shared. But for those who got the
2 benefit of a certain project, yes, these costs would
3 be shared.

4 Q. Now sir, Exhibit 282 refers to the fact -- or
5 refers to an April 10th, 1958 agreement in its first
6 paragraph; doesn't it?

7 A. It says, "Under the arrangement of 10th April
8 1958, the combined expenses of Southampton and
9 Louisville Research and Development Establishments
10 (with the exception of technical control expenses,
11 which are related directly to the manufacturing
12 processes and crop analyses of each Company, and with
13 the exception of 'Major Research Projects' of which
14 PCL has hitherto been the only example) are shared on
15 the basis of sales volume, using the ratio of Brown &
16 Williamson's own sales to the world sales of B-A.T.
17 and its other other Associated Companies," 10th
18 April, 1958.

19 Q. All right. So, sir, have you ever seen that
20 agreement?

21 A. No.

22 Q. You have no reason to believe it doesn't exist,
23 though; do you?

24 MR. CORRIGAN: Well let me object to the
25 form. He hasn't seen it.

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1 Go ahead.

2 A. I haven't seen that document.

3 Q. All right. The 1958 agreement, have you ever
4 seen that agreement?

5 A. No, I haven't.

6 (Plaintiffs' Exhibit 693 was

7 marked for identification)

8 BY MS. WIVELL:

9 Q. Sir, showing you what's been marked as
10 Plaintiffs' Exhibit 693, it begins with the Bates
11 number 680503124; right?

12 A. 680503124.

13 Q. Is that right?

14 A. That is right.

15 Q. All right. Would you take a moment and read
16 this.

17 A. I've read it.

18 Q. Exhibit 693 confirms a continuation of a pooling
19 arrangement between Brown & Williamson and BATCO;
20 doesn't it?

21 MR. CORRIGAN: Object to the form of the
22 question, document speaks for itself, predates this
23 witness's commencement of employment.

24 A. The document says, "This will confirm our
25 arrangements for the pooling of routine R&D product

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1 as between Louisville and the Southampton and other
2 B.A.T. research and development facilities."

3 Q. It goes on to say, "We will, with your
4 agreement, continue to pool the product of the
5 several research and development establishments in
6 which B.A.T. has an interest, London serving as the
7 clearing house;" right?

8 A. That is the second sentence of that document.

9 Q. Now sir, at the time this document was written,
10 one of the other B.A.T. research and development
11 facilities was the B.A.T. Cigaretten Fabriken
12 facility which you have referred to earlier in your
13 testimony; right?

14 MR. CORRIGAN: Object to the form, lack of
15 foundation.

16 A. In 1962 I was still at -- no, not -- not at
17 school. I was --

18 In March 1962, I was doing my national service,
19 actually, so I have no knowledge of that.

20 Q. All right. Well when, to the best of your
21 knowledge, was the B.A.T. Cigaretten Fabriken
22 research facility in Germany developed?

23 A. I have no -- no idea.

24 Q. It's been in place for a long time, though;
25 hasn't it?

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1 A. It was --

2 MR. CORRIGAN: Object to the form of the
3 question.

4 A. It was in place when I joined.

5 Q. All right.

6 A. That is what I know exactly.

7 Q. All right. Well sir, the second sentence refers
8 to London serving as a clearing house. When you
9 joined B.A.T. Cigaretten Fabriken, did you understand
10 that BATCO served as the clearing house for research
11 that was done by various facilities within the
12 tobacco group?

13 MR. CORRIGAN: Object to the form.

14 A. I don't understand what they here mean by
15 "clearing house." I would have to speculate, which
16 I don't do.

17 Q. Well sir, let me ask you this: Did BATCO serve
18 as a clearing house while you -- or serve -- strike
19 that.

20 While you were with B.A.T. Cigaretten Fabriken,
21 did you learn that BATCO sent out reports to various
22 tobacco companies concerning research that had been
23 done within the group?

24 A. In principle I was aware -- I was aware that
25 certain reports came out of Southampton.

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1 Q. And that continues up to today; doesn't it?

2 A. I think so.

3 Q. In other words, reports to be generated at
4 Cigaretten Fabriken in Germany are sent to
5 Southampton, and then they're still circulated
6 throughout the tobacco members of the group; right?

7 MR. CORRIGAN: Objection, lack of
8 foundation.

9 A. There will be reports sent out by B.A.T.
10 Cigaretten Fabriken to BATCO or to -- to -- R&D in
11 Southampton to Brown & Williamson, and the other way
12 around. I have no reason to believe that that is not
13 the case.

14 Q. And it's been the case that there have been
15 shared research results throughout the tobacco group
16 from the time that you joined the company.

17 MR. CORRIGAN: Object to the form.

18 A. I don't know that in detail, but I assume that
19 is correct.

20 Q. Well, based on being the chief executive officer
21 of Cigaretten Fabriken, you understood that that was
22 the case even though you personally weren't sending
23 out reports; right?

24 MR. CORRIGAN: Objection to the form.

25 A. I was aware that we paid for research done

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1 elsewhere in the group.

2 Q. And you got reports of that research and results
3 for those -- in exchange for those payments; didn't
4 you?

5 MR. CORRIGAN: Same objection.

6 A. Our -- our scientists -- when I say "our," I
7 mean the scientists of B.A.T. Cigaretten Fabriken --
8 would -- would receive reports.

9 Q. And you understood that Brown & Williamson could
10 receive through these agreements reports that your
11 scientists at Cigaretten Fabriken had done; right?

12 MR. CORRIGAN: Objection to form.

13 A. I have no personal knowledge in detail whether
14 that was the case or not, but --

15 No. That's it.

16 Q. But you believe it generally to be true based on
17 your experience; don't you, sir?

18 MR. CORRIGAN: Objection to the form.

19 A. I believe there was an interchange, yes.

20 Q. Sir, showing what's been previously marked as
21 Exhibit 283 in this litigation, it is entitled
22 B.A.T./B&W R&D COSTS AND RISK POOLING AGREEMENT;"
23 correct?

24 A. That is the heading of that -- on -- of the
25 first page of that document.

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1 Q. And the first page of the document bears the
2 Bates number 301122441.

3 A. 301122441, correct.

4 Q. And if you turn to the last page, we see that
5 the document is dated the 9th of July, nineteen
6 hundred -- I'm sorry, 1969; right?

7 A. I have to find that.

8 The 9th day of July, one thousand nine hundred
9 and sixty-nine.

10 Q. All right. Could you take a few moments and
11 review this document, sir.

12 MS. WIVELL: May we take a break, please?
13 I would appreciate it.

14 MR. CORRIGAN: Of course.

15 THE WITNESS: Okay.

16 THE REPORTER: Off the record, please.

17 (Recess taken.)

18 BY MS. WIVELL:

19 Q. All right, sir, why don't you take a moment and
20 read Exhibit 283.

21 A. All right.

22 I've read it.

23 Q. Sir, you've now had the opportunity to read
24 Exhibit 283; right?

25 A. Correct.

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1 Q. It is an agreement between BATCO and B&W
2 concerning research and development costs; right?

3 A. It's an agreement between British-American
4 Tobacco Company Limited and Brown & Williamson
5 Tobacco Corporation.

6 Q. And British-American Tobacco Company Limited is
7 often referred to as BATCO; right?

8 A. I think it is, yes.

9 Q. Now this is another, like the agreements -- the
10 last couple of exhibits we've seen, concerning an
11 agreement to share information.

12 MR. CORRIGAN: Let me just object to the
13 characterization of the prior documents as
14 "agreements." I'm not sure they were.

15 A. Could I have the question again?

16 Q. Certainly.

17 This is another example, like the last couple of
18 exhibits we've seen, concerning an agreement to share
19 information; right?

20 A. This is an agreement to share information, yes.
21 That is this agreement.

22 Q. All right. And --

23 A. From 1969 it is. Yeah.

24 Q. The agreement was to share not only research
25 information but also development work; right?

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1 A. It is research and development work.

2 Q. And the reason that it was thought important to
3 share research and development work was that it was
4 thought that it was to the benefit of all of the
5 parties to -- to make that sharing arrangement.

6 MR. CORRIGAN: Object to the extent you ask
7 the witness to speculate as to what the draft is of
8 the document, but --

9 A. The document itself says, "The product of most
10 of the research and development work conducted by the
11 parties is mutually beneficial." That is what the
12 document states.

13 Q. It also tells us that for years the parties to
14 the agreement have been exchanging the product of
15 their development work; doesn't it, sir?

16 MR. CORRIGAN: Objection, the document
17 speaks for itself.

18 A. Could you please point me to where it says that?

19 Q. Yes. The second page, paragraph (d), begins
20 with the statement, "The parties have for many years
21 exchanged the product of their development work."

22 A. That is correct.

23 Q. Now "development work" is defined on the page
24 that ends with 444; right?

25 MR. CORRIGAN: Let me object because the

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1 document has some preliminary definitions in it that
2 precede that page.

3 A. There are certain definitions given in the
4 document, yes.

5 Q. And the definition of "product work" here says
6 "patent rights, know-how, reports, drawings,
7 specifications, mock-ups, specimens and all other
8 proprietary product necessary or useful to the
9 evaluation, protection, and exploitation of
10 development work;" right?

11 A. That is -- that --

12 It says that on 444 under (e), yes.

13 Q. Now sir, did you understand that those kinds of
14 things that are listed there were what was referred
15 to in the B.A.T Industries tobacco group as
16 "development product?"

17 MR. CORRIGAN: Let me object to the form of
18 the question, asking him did he understand in 1969.

19 MS. WIVELL: No, I'm not asking him that.

20 MR. CORRIGAN: I'm sorry. I thought you
21 were.

22 MS. WIVELL: Let me rephrase the question
23 then.

24 MR. CORRIGAN: All right.

25 BY MS. WIVELL:

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1 Q. When you joined B.A.T. Cigaretten Fabriken, did
2 you un -- learn that the kinds of things listed here
3 under "Development product" were part of an agreement
4 to share information?

5 A. I cannot tell you because this document says
6 that the duration of the contract is for a period of
7 five years from its effective date, and I think the
8 effective date in the document was given as 1st
9 January 1969.

10 Q. I -- I understand that, sir, but I'm asking you
11 when you joined B.A.T. Cigaretten Fabriken, did you
12 understand that the kinds of things that are referred
13 to here were shared with the other members of the
14 B.A.T Industries tobacco group?

15 MR. CORRIGAN: Object to the form of the
16 question.

17 A. This document gives very many details, and I
18 cannot recall that I have seen a document which would
19 exactly have the same definition -- definitions as
20 are given here in this '69 document.

21 Q. But sir, you understood generally, or you
22 learned after you joined B.A.T. Cigaretten Fabriken,
23 that the kinds of development project information
24 that's listed here were shared between the various
25 members of the B.A.T Industries tobacco group; didn't

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1 you, sir?

2 MR. CORRIGAN: Objection, asked and

3 answered.

4 A. What I learned was that there was development --
5 research and development work shared. Whether to
6 that extent as laid out here, I cannot tell you.

7 Q. Fair enough.

8 Now sir, the next paragraph of Exhibit 283
9 refers to primary B.A.T. development centers, and it
10 even lists B.A.T. Cigaretten Fabriken in Germany;
11 doesn't it?

12 A. It does list B.A.T. Cigaretten Fabriken GmbH as
13 one of the primary B.A.T. development centers, yes.

14 Q. And sir, you did understand -- or you learned
15 after you joined B.A.T. Cigaretten Fabriken that it
16 was considered to be one of the B.A.T Industries
17 tobacco group's primary development centers.

18 MR. CORRIGAN: Object to the form.

19 A. It is a matter of fact for me that the research
20 and development facility of B.A.T. Cigaretten
21 Fabriken GmbH was one of the research and development
22 facilities of the operating groups ultimately owned
23 by B.A.T Industries P.L.C.

24 THE REPORTER: Let's go off the record just
25 a moment, please.

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1 (Discussion off the record.)

2 BY MS. WIVELL:

3 Q. Sir, showing you what's been previously marked
4 in this litigation as Exhibit 284, this is a letter
5 dated June 20th, 1974 between Brown & Williamson and
6 British-American Tobacco Company Limited; correct?

7 A. It's a letter from June 20th, 1974, from the --
8 addressed to the secretary of British-American
9 Tobacco Company Limited, and it is from Brown &
10 Williamson Tobacco Corporation, signed by the
11 vice-president finance.

12 Q. For the record, the Bates number is 202347098;
13 right?

14 A. I have to guess; my number is not very clear
15 here. But I think this is correct.

16 Q. Now sir, take a moment and review this document,
17 please.

18 A. I've read it.

19 Q. Sir, Exhibit 284 extends the contract we were
20 just looking at, which was Exhibit 283; doesn't it?

21 A. My understanding --

22 MR. CORRIGAN: Note my objection, but you
23 may answer.

24 A. My -- my understanding of this letter is that
25 the agreement which was concluded in 1969 and became

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1 effective on the 1st January of 1969 for the period
2 of five years was extended beyond its initial
3 five-year period.

4 Q. It extends it indefinitely; doesn't it, sir?

5 A. It says, "...it is hereby agreed that the first
6 sentence of Section 9 of the agreement to be amended
7 to read as follows:

8 "This contract shall remain in force
9 indefinitely except that either party may terminate
10 at any time by giving not less than 180 days'
11 notice." That is what the document says.

12 Q. Sir, showing you what's previously been marked
13 as Exhibit 286, this is a document that bears the
14 Bates number 301122439 on its first page; right?

15 A. 301122439, correct.

16 Q. All right. Would you take a moment and review
17 this document, please.

18 A. I've read it.

19 Q. All right. Exhibit 286 is a document which
20 rescinds the pooling agreements that we've just
21 looked at in the two previous agreement, doesn't it?

22 MR. CORRIGAN: Objection.

23 Q. The last two exhibits.

24 MR. CORRIGAN: Objection, the document
25 purports to do what it says.

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1 You may answer.

2 A. Can I have the question, the exact question
3 again?

4 Q. All right. Let me rephrase it.

5 Exhibit 286 begins which rescinding -- I'm
6 sorry, strike that.

7 Exhibit 286 rescinds the agreements that we've
8 looked at in Exhibit 283 and 284; doesn't it?

9 MR. CORRIGAN: Objection, asking the
10 witness to tie documents together, all of which
11 predate his employment. They speak for themselves.

12 A. "Rescinds" means terminates?

13 Q. Yes.

14 A. My understanding of this document, it rescinds
15 or it terminates the agreement which we just looked
16 at before.

17 Q. And then it puts a new agreement in its place;
18 doesn't it?

19 MR. CORRIGAN: Same objection.

20 A. And it -- the document says "...and a new
21 agreement shall apply under the following terms and
22 conditions," and then there are the conditions given,
23 one through three. Do you want me to read that?

24 Q. Not out loud. Thank you.

25 Now it refers in the second complete paragraph

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1 to a review which "has served to underscore the
2 importance of the centralized and coordinated
3 research program which is being carried out by BAT in
4 support of long-range overall Group strategy;" right?

5 A. First --

6 Second paragraph, you mean, which is numbered --

7 Q. Second paragraph on the first page, sir.

8 A. Oh, I'm sorry. I'm sorry.

9 Q. Let me rephrase the question.

10 Now it refers in the second complete paragraph
11 to a review which had served to underscore the
12 importance of the centralized and coordinated
13 research function which was being carried out by
14 B.A.T. in support of long-range overall group
15 strategy; right?

16 MR. CORRIGAN: Excuse me, Ms. Wivell, I
17 think you misspoke, you used the word "function" when
18 you intended to say "program."

19 A. The second paragraph says, "Over the past year a
20 broad review has been made on the conduct and
21 financing of research among the companies, including
22 Brown & Williamson" -- Brown & Williamson or "B&W,
23 affiliated with BAT and engaged in the manufacture
24 and marketing of tobacco products. This review has
25 served to underscore the importance of the

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1 centralized and coordinated research program which is
2 being carried out by BAT in support of long-range
3 overall Group strategy. It has also indicated the
4 need to revise the existing arrangement for sharing
5 the costs of such Central Group research so that
6 those companies who benefit from that research will
7 bear their fair share of the overall expense."

8 Q. Sir, when you joined B.A.T. Cigaretten Fabriken,
9 did you understand that the centralized and
10 coordinated research program was part of a long-range
11 overall group strategy?

12 MR. CORRIGAN: Object to the form.

13 A. When I joined B.A.T. -- B.A.T. Cigaretten
14 Fabriken in Germany, I didn't have knowledge of that.

15 Q. All right. Did you learn after you joined
16 B.A.T. Cigaretten Fabriken that coordinated research
17 was being done in order to effect a long-term
18 strategy?

19 MR. CORRIGAN: Object to the form.

20 (Discussion off the stenographic record.)

21 A. Can I have, then, the question, please?

22 Q. All right. Let me rephrase it.

23 Did you learn after you joined B.A.T. Cigaretten
24 Fabriken that coordinated research was being done in
25 order to bring about a long-term strategy?

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1 MR. CORRIGAN: Objection to form.

2 A. The understanding I developed after I had joined
3 B.A.T. Cigaretten Fabriken, that there was shared
4 group research mainly on the basis that it made sense
5 to avoid duplication of effort.

6 Q. But did you also learn that it was part of a
7 long-term overall group strategy?

8 A. That is --

9 MR. CORRIGAN: Objection to form.

10 THE WITNESS: Oh, sorry.

11 A. It's the first time that I see that here in that
12 document.

13 Q. Well did you get the impression as you spent
14 more time at B.A.T. Cigaretten Fabriken that it was
15 part -- that coordinated research was part of a
16 long-term overall group strategy?

17 MR. CORRIGAN: Objection to form.

18 A. I have no idea what the authors of this
19 agreement had in mind when they talked about overall
20 group strategy, it's not clear to me, so I couldn't
21 develop an understanding whether that was the case
22 later on. "Strategy" is a word which has to be
23 defined.

24 Q. Now sir, when you became a member of the B.A.T.
25 Industries board, that was in what year, sir?

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1 A. I was -- became a member of the B.A.T Industries
2 board in October 1990.

3 Q. And you joined the Chairman's Policy Committee,
4 I think you said, in 1992?

5 MR. CORRIGAN: Objection, I think he said
6 CEC.

7 A. I think I joined the CPC first, and when Mr.
8 Broughton became chief executive officer and Sir
9 Patrick Sheehy became non-executive chairman, the CPC
10 was named -- the CPC was succeeded by the CEC.

11 Q. How long did Sir Patrick Sheehy stay as
12 non-executive chairman?

13 A. I --

14 He stayed non-executive chairman until the end
15 of 1995, if I remember it correctly.

16 Q. Now sir, during that time did you understand --
17 strike that.

18 During the time that you were a member of the
19 B.A.T Industries board and the Chairman's Policy
20 Committee, did you understand that BATCO and Brown &
21 Williamson entered into another pooling agreement?

22 MR. CORRIGAN: Object to the form.

23 A. I recall that there was another agreement on
24 research and development work between BATCO and Brown
25 & Williamson, yes.

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1 Q. And this agreement was negotiated through B.A.T
2 Industries; wasn't it, sir?

3 MR. CORRIGAN: Object to the form of the
4 question.

5 A. The agreement, if I recall it correctly, was
6 negotiated between BATCO and Brown & Williamson.

7 Q. Well sir, Stuart Chalfen is the solicitor
8 in-house at B.A.T Industries P.L.C.; isn't he?

9 A. He is the --

10 Mr. Chalfen is the solicitor of B.A.T Industries
11 P.L.C.

12 Q. And didn't he have a role in bringing about the
13 pooling agreement that was entered into after you
14 joined the board of B.A.T Industries between Brown &
15 Williamson and BATCO?

16 MR. CORRIGAN: Object to form.

17 A. As I said, the agreement, as I recall it, was
18 negotiated between Brown & Williamson and -- and
19 BATCO, and what I also recall is that Mr. Chalfen
20 provided certain services.

21 Q. What services did Mr. Chalfen provide?

22 A. I -- I don't recall the detail.

23 Q. Well was Brown & Williamson billed for those
24 services?

25 A. I think part of the --

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1 For Mr. Chalfen's services?

2 Q. Yes, sir.

3 A. I don't know.

4 (Plaintiffs' Exhibit 694 was marked
5 for identification.)

6 BY MS. WIVELL:

7 Q. Sir, showing you what's been marked as
8 Plaintiffs' Exhibit 694, this is a copy of the R&D
9 cost-sharing, confidentiality and licensing agreement
10 between British-American Tobacco Company Limited and
11 Brown & Williamson that we've just been referring to;
12 isn't it?

13 A. It is the R&D cost-sharing, confidentiality and
14 licensing agreement between British-American Tobacco
15 Company Limited and Brown & Williamson Tobacco
16 Corporation.

17 Q. It's dated December 23rd, 1992.

18 A. It's dated 23rd day of December 1992.

19 Q. And this is the document that we have just been
20 referring to that was entered into after you joined
21 the B.A.T Industries board; correct?

22 MR. CORRIGAN: Object to the form.

23 A. This is an agreement December 1992. I joined
24 B.A.T Industries P.L.C. in July 1992 as an executive,
25 so it is an agreement in force at that time, yes.

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1 Q. And sir, when we were talking about the
2 agreement that Mr. Chalfen took part in or provided
3 some services for, this is the agreement that you
4 were referring to; isn't it?

5 MR. CORRIGAN: Object to the form.

6 A. I think it is.

7 Q. Now sir, this refers to licensing in addition to
8 cost sharing and confidentiality; doesn't it, sir?

9 A. That is what the heading says. It refers to a
10 licensing agreement as well, and confidentiality, and
11 cost-sharing.

12 Q. Now sir, you referred earlier in your testimony
13 to the fact that as a result of licenses which B.A.T.
14 Cigaretten Fabriken had of Brown & Williamson
15 products, that you met from time to time with Brown &
16 Williamson employees; right?

17 A. What I said was that there was license
18 agreements for brands which were owned by Brown &
19 Williamson which B.A.T. Cigaretten Fabriken were --
20 was using, and so it was brands, not products.

21 Q. I see. Did B.A.T. Cigaretten Fabriken pay Brown
22 & Williamson for the use of those licenses?

23 A. Yes.

24 Q. Now sir, have you read this document?

25 A. I'm not sure whether I have read it.

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1 Q. All right. Why don't you take a moment and read
2 it, please.

3 A. Yeah.

4 MR. BEZANSON: Could you give us the Bates
5 number on that, Ms. Wivell?

6 MS. WIVELL: Oh, I'm sorry. Yes,
7 certainly. For the record, this document begins with
8 the Bates number 202213940.

9 THE WITNESS: That is correct.

10 MR. BEZANSON: Thank you.

11 A. I've read it.

12 Q. All right. Sir, this contract was entered into
13 after you became the managing director of the tobacco
14 business for B.A.T Industries; right?

15 MR. CORRIGAN: Object to the form.

16 A. This agreement was entered in December 1992, and
17 that is after I joined B.A.T Industries as managing
18 director tobacco in July 1992.

19 Q. Now it refers in paragraph A. on the first page
20 to the fact that BATCO has for many years maintained
21 a research and development center in England; right?

22 A. It says, "BATCo has for many years maintained a
23 research and development center in England...."

24 Q. That's the Southampton center; isn't it?

25 A. I understand it is the Southampton research and

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1 development facility.

2 Q. And according to this document, that facility
3 conducts and commissions research and development
4 work for BATCO; right?

5 MR. CORRIGAN: Objection, "BATCo and its
6 affiliates" it says.

7 A. The document says that the research and
8 development center in England "conducts and
9 commissions research and development work for BATCo
10 and its affiliates in connection with or directed to
11 the development, manufacture and sale of tobacco
12 products...."

13 Q. And you understood that that was the purpose of
14 the Southampton center; didn't you?

15 MR. CORRIGAN: Object to the form.

16 A. The purpose of the research and development
17 facility in Southampton is to conduct research and
18 development work.

19 Q. For not only BATCO but its affiliates, including
20 Brown & Williamson; right?

21 A. It makes, through the agreements we have
22 discussed earlier, and this one is another one, it
23 makes research available to Brown & Williamson, for
24 example, and that is what the contract here says.

25 Q. And Brown & Williamson, according to this

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1 contract, had the right to discuss and agree with
2 BATCO and the other participants in the research that
3 went on at that research facility; isn't that true?

4 MR. CORRIGAN: Objection. The rights and
5 duties of the parties are set forth in the document.

6 A. I can't find where that is.

7 Q. Paragraph B. on the first page, sir.

8 A. Paragraph B. on the first page.

9 Q. Let me rephrase the question.

10 According to Exhibit 694, Brown & Williamson had
11 the right to discuss and agree with BATCO and the
12 other participants in the research that went on at
13 the BATCO research facility; right?

14 MR. CORRIGAN: Same objection.

15 A. The document under B. on the first page says,
16 "Research areas and the cost of Central Research are
17 to be discussed and agreed annually by BATCo, Brown &
18 Williamson and the other Participants." Research
19 areas and the cost of the research, --

20 Q. All right.

21 A. -- central research.

22 Q. Now sir, did you understand that the research
23 areas and the cost of the research were a subject
24 which Brown & Williamson had a right to discuss and
25 agree to?

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1 MR. CORRIGAN: Well let me object to the
2 extent you're asking the witness to interpret a
3 contract. But you may answer.

4 A. I think the contract here is clear. It says,
5 "Research areas and the cost of Central Research are
6 to be discussed and agreed annually by BATCo, Brown &
7 Williamson and the other Participants." And the
8 document also says that Brown & Williamson -- I just
9 have to find it --

10 Q. Are you referring to point three?

11 A. Well I'm just --

12 There, that is the cost. No. No.

13 Q. Well who are the other participants that are
14 referred to in B., sir?

15 MR. CORRIGAN: Object to the form.

16 A. I don't know exactly, but --

17 I don't know exactly, but most -- most probably
18 B.A.T. Cigaretten Fabriken. '92.

19 MR. CORRIGAN: Well let -- let me just note
20 for the record the participants are defined on the
21 next page, subdivision (d).

22 THE WITNESS: (d).

23 MR. CORRIGAN: And that refers to a
24 schedule, which does not appear to be attached to
25 this particular document.

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1 THE WITNESS: Yeah.

2 Q. Sir, were the costs of research also discussed
3 with B.A.T Industries?

4 MR. CORRIGAN: Object to the form.

5 A. Not that I'm aware of.

6 Discussed. No.

7 Q. Well sir, isn't it a fact that B.A.T. employees
8 did discuss how research costs were to be allocated
9 between BATCO and B&W pursuant to various licensing
10 agreements?

11 MR. CORRIGAN: Object to the form of the
12 question. You said "B.A.T. employees." I think
13 that's ambiguous.

14 MS. WIVELL: All right. It is, and let me
15 rephrase the question.

16 Q. Isn't it a fact that B.A.T Industries employees
17 did discuss how research development -- I'm sorry,
18 strike that.

19 Isn't it a fact that B.A.T Industries employees
20 did discuss how research costs were to be allocated
21 between BATCO, Brown & Williamson, and various other
22 tobacco group companies pursuant to these various
23 licensing agreements?

24 MR. CORRIGAN: Object to the form.

25 A. I can't recall, but if they had, they would have

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1 had to have come up with the formula of how to share
2 the costs.

3 Q. Well sir, isn't it a fact that that actually
4 happened?

5 A. I can't recall.

6 MR. CORRIGAN: Objection.

7 Q. Do you know an individual by the name of
8 Etherington?

9 A. Ken Etherington. Yes, I know the name.

10 Q. What --

11 A. An individual by that name.

12 Q. Who does he work for?

13 A. He is an employee of B.A.T Industries P.L.C.

14 Q. And do you know an individual by the name of
15 S-u-r-d-a-u, Surdeau?

16 A. Surdeau. Yes.

17 Q. Who --

18 Is that a mister?

19 A. It's a Mr. Surdeau, yes.

20 Q. And to --

21 By whom is he employed?

22 A. By whom is he employed today?

23 Q. Yes.

24 A. Today.

25 Difficult question to answer. He is working as

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1 a finance director in B.A.T. Hungary.

2 Q. Today.

3 A. Today.

4 Q. And in 1991?

5 A. He was working at B.A.T Industries P.L.C. He
6 had his office there. Whether he was an employee of
7 the company, I can't tell you exactly. He may have
8 been seconded from other companies. But he was
9 working there.

10 Q. By "seconded," you mean what?

11 A. Seconded, I -- I mean that he was seconded to
12 B.A.T Industries P.L.C. for a certain amount -- for a
13 certain time, for a certain period.

14 Q. "Seconded" is not a word a lot of Americans are
15 used to using. It means lent to by another company;
16 doesn't it?

17 MR. CORRIGAN: Object to the form.

18 A. If you want to take it that way, lent to, yes.

19 Q. All right.

20 (Plaintiffs' Exhibit 695 was marked
21 for identification.)

22 BY MS. WIVELL:

23 Q. Sir, showing you what's been marked as
24 Plaintiffs' Exhibit 695, this is a memo -- memo from
25 D. W. Surdeau to Mr. K. Etherington dated June 5th,

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1 1991; right?

2 A. It's dated 5th June 1991 and it's a memo from
3 Mr. Surdeau to Mr. Etherington.

4 Q. The Bates number is 202601618; right?

5 A. Bates number is 202601618.

6 Q. And sir, this document concerns the allocation
7 of research and development expenses between the
8 various B.A.T Industries tobacco companies; doesn't
9 it?

10 MR. CORRIGAN: Object to the form of the
11 question.

12 A. Can I read the document --

13 Q. Certainly.

14 A. -- before I answer?

15 What is the question now?

16 Q. All right. Sir, Exhibit 695 concerns the
17 allocation of research and development expenses
18 between the various B.A.T Industries tobacco
19 companies; doesn't it?

20 A. It says "Revised Allocation for R&D
21 Expenditure," yes.

22 Q. And it's clear here that B.A.T Industries was
23 playing a role in the allocation of expenditures for
24 research and development between the various tobacco
25 group companies.

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1 MR. CORRIGAN: Object to the form. The
2 document does not make that clear.

3 A. Mr. Surdeau has consulted Mr. David Salt, which
4 I believe is an employee of BATCO or BATUKE, who has
5 given him the figures for research -- actually for
6 the actual recharge for fundamental research in 1990,
7 and then it goes on and gives the basis of
8 allocation. Basis of allocation, doesn't say -- it
9 doesn't say for which year.

10 Q. All right, sir. Let's start with the recharge.

11 What's a recharge?

12 A. I don't know exactly, but what I would
13 understand from this paper is that this would be the
14 charges which have been distributed to the
15 participating company, BATCO, Brown & Williamson,
16 BATCF, IMASCO, out of a total of 3.5 million pounds,
17 I believe. Yeah, pounds.

18 Q. In other words, the figure under the -- or next
19 to the Brown & Williamson heading, 1,089,000 pounds,
20 would be the amount that B&W would have been charged
21 for the research done at Southampton; is that your
22 understanding, sir?

23 MR. CORRIGAN: Objection to the form.

24 A. What I understand is that is the charge Brown &
25 Williamson had to pay for the allocation of R&D

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1 expenditure.

2 Q. And that --

3 A. But that's only Southampton. If others are
4 included, I don't know.

5 Q. Okay. Fair enough. It goes on to say in
6 paragraph two, "We have agreed the following basis of
7 allocation;" correct?

8 A. That is what it says. "We have agreed the
9 following basis...."

10 Q. Then it goes on, after giving the figures, to
11 say, "This represents net external turnover with an
12 adjustment of plus 74 million pounds for Brown &
13 Williamson and minus 74 million pounds for BATCo to
14 account for B&W trade to China through Hong Kong.

15 The figures include leaf and cigarettes." Have I
16 read that correctly?

17 A. "And cigars."

18 Q. And -- I'm sorry. "And cigars." Apart from
19 that have I read it correctly?

20 A. I think you have read it correctly.

21 Q. What is meant by "net external turnover," sir?

22 A. "Net external turnover." Most probably it is
23 gross turnover less taxes.

24 Q. Now sir --

25 A. Less excise taxes, maybe discounts.

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1 Q. Now sir, this memo was written in response to a
2 proposal which Mr. Etherington had written concerning
3 the allocation of R&D expenses for 1990; right?

4 MR. CORRIGAN: Objection.

5 A. I don't know. I --

6 What I see here from the document, it is written
7 by Mr. Surdeau to Mr. Ken Etherington, and Mr. Ken
8 Etherington is the -- the specialist in B.A.T
9 Industries for taxes.

10 Q. For taxes; right?

11 A. For tax.

12 Q. All right.

13 (Plaintiffs' Exhibit 696 was marked
14 for identification.)

15 BY MS. WIVELL:

16 Q. Sir, showing you what's been marked as
17 Plaintiffs' Exhibit 696, this is a document that
18 begins with the Bates number 202601636; right?

19 A. Bates number 202601636, correct.

20 Q. And that is a note for Mr. R. H. Pilbeam
21 concerning R&D funding; right?

22 A. It's a note to Mr. R. H. Pilbeam concerning R&D
23 funding, correct.

24 Q. It was written by D. E. Salt?

25 A. Written --

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1 It is signed by D. E. Salt, yes.

2 Q. And the date of the memo is March 28th, 1991.

3 A. Date of the memo is 28th March 1991.

4 Q. Now sir, at the time this memo was written, what
5 position did Mr. Pilbeam have?

6 A. Mr. Pilbeam at that time, March 1991, I think he
7 was the finance director of BATCO.

8 Q. And Mr. Salt's position was what at the time
9 this memo was written?

10 A. Mr. Salt, I don't -- don't know exactly, but I
11 would guess he is one of the staff of Mr. -- working
12 for Mr. Pilbeam. But I'm not sure.

13 Q. Now sir, would you take a moment or two to look
14 over this document.

15 MR. CORRIGAN: While he's doing that, I'll
16 be right back.

17 MS. WIVELL: Well let's take a break then.

18 MR. CORRIGAN: Okay.

19 THE REPORTER: Off the record, please.

20 (Recess taken.)

21 BY MS. WIVELL:

22 O. All right, sir, why

23 two and read E

24 A T will read

P O BOX 18188 M

1 Q. All right, sir. Exhibit 696 refers to a
2 proposal put forward by Ken Etherington; doesn't it?

3 A. Yes, it is the -- was to look at the proposal
4 put forward by Ken Etherington. That's what it says.

5 Q. Now sir, wasn't Mr. Etherington trying on behalf
6 of B.A.T Industries to reduce the impact on U.K.
7 income, and therefore reduce the taxes that would be
8 paid?

9 MR. CORRIGAN: Object to the form of the
10 question. You haven't shown him the proposal by Mr.
11 Etherington. You're asking him to speculate.

12 A. What I understand from this document is that the
13 proposal Mr. Ken Etherington has put forward is,
14 under one -- it doesn't say that it specifically, but
15 that is what I would take from this document. That
16 is what I would take from this document.

17 Q. All right, sir. Well isn't it a fact that the
18 Tobacco Strategy Review Team eventually discussed the
19 proposal to apportion the fundamental research
20 expenditures in order to try and reduce the impact on
21 U.K. income by allocating larger proportions of the
22 R&D expenses to Brown & Williamson?

23 MR. CORRIGAN: Object to the form.

24 A. I don't recall.

25 (Plaintiffs' Exhibit 697 was marked

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1 for identification.)

2 BY MS. WIVELL:

3 Q. Sir, showing you what's been marked as

4 Plaintiffs' Exhibit 697, this is a document that

5 bears the number 202601620; right?

6 A. Number is 202601620.

7 Q. Why don't you take a moment and review it.

8 A. Read it.

9 Q. Sir, Exhibit 697 is a memo which Ken Etherington
10 wrote to Mr. Salt and sent carbon copies to Martin
11 Broughton, to Mr. Pilbeam, and to Mr. Surdeau;
12 correct?

13 A. That is correct.

14 Q. The subject of the memo is R&D funding; is that
15 correct?

16 A. That is also correct.

17 Q. And it again shows Mr. Etherington's involvement
18 in trying to work out some formula by which the
19 pooled R&D expenses from Southampton could be shared
20 between the companies; right?

21 MR. CORRIGAN: Object to the
22 characterization of the document, which speaks for
23 itself.

24 A. What I take from the document is that Mr.
25 Etherington, as -- as a tax expert, has looked into

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1 the sharing of the cost from a tax point. When I say
2 "from a tax point," it means that it is acceptable
3 to the various revenue authorities. He --

4 As I understand it, it says that he has used his
5 tax expertise.

6 Q. And do these memos, Exhibits 696 and 697,
7 refresh your recollection that indeed, as a B.A.T
8 Industries employee, Mr. Etherington was involved in
9 trying to allocate the expenses for R&D between the
10 various members of the tobacco group companies?

11 MR. CORRIGAN: Object to the form.

12 A. I'm judging it on -- on these memos here, and as
13 I said, Mr. Etherington was asked to give a view as a
14 tax expert.

15 Q. Well sir, the last sentence of Exhibit 697 says,
16 "Once I have your agreement and have written to B&W
17 again, I will be in a position to make
18 recommendations to the TSRT." Right?

19 A. That is what the memo says.

20 Q. The TSRT is the Tobacco Strategy Review Team.

21 A. That is correct.

22 Q. You were a member of the Tobacco Strategy Review
23 Team at the time these memos were written.

24 A. I was.

25 Q. And sir, do you recall and do they -- strike

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1 that.

2 Do these memos help refresh your recollection
3 that indeed the subject matter of the allocation of
4 research and development expenses between B&W and the
5 other companies was discussed by the Tobacco Strategy
6 Review Team?

7 MR. CORRIGAN: Object to the form of the
8 question.

9 A. They may have been discussed, but I just don't
10 recall it. But they may have been discussed.

11 Q. Do you recall how the issue was concluded?

12 MR. CORRIGAN: Object to the form of the
13 question, it's ambiguous when you use the phrase "the
14 issue."

15 A. I have no recollection how exactly it was
16 resolved at the end of the day.

17 Q. Sir, did --

18 A. But --

19 Q. I beg your pardon. I'm sorry. Go ahead.

20 A. But I assume there has been a resolution.

21 Q. Sir, did Brown & Williamson remit research and
22 development -- strike that.

23 Did Brown & Williamson remit payment for
24 research and development expenses pursuant to pooling
25 agreements directly to B.A.T Industries?

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1 MR. CORRIGAN: Object to the form of the
2 question.

3 A. I don't recall that. What I take from the
4 exhibits and from my understanding, the funding --
5 sorry, the payments of Brown & Williamson would have
6 gone -- would have gone to BATCO.

7 Q. Do you know that to be a fact, sir?

8 A. I don't know whether that's a fact, but that is
9 what I would expect -- expect to be the case.

10 Q. Were the Brown & Williamson al -- strike that.

11 Was the Brown & Williamson allocation based on
12 its sales in the Far East, in part?

13 MR. CORRIGAN: Object to the extent that
14 you have no timeframe now, and you've gone through
15 various agreements that have various different terms.

16 A. I don't recall the exact nature.

17 Q. Sir, going back to Exhibit 694, the December
18 1992 R&D cost-sharing and confidentiality and license
19 agreement, would you turn to the third page of the
20 document that ends with the Bates number 942.

21 A. Yes. I have that page.

22 Q. You have it there?

23 A. Yeah.

24 Q. There is a section five that -- that refers to
25 research materials; right?

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1 A. Yes, section five.

2 Q. Now section five three requires Brown &
3 Williamson, upon request, to immediately return to
4 BATCO all BATCO documents; right?

5 A. Let me read section (3) of five again.

6 MR. BEZANSON: Object to the form.

7 A. Section (3) of five says, "Brown & Williamson
8 will upon request immediately return to BATCo all
9 BATCo Documents."

10 Q. All right. Sir, why was that section of the
11 contract included?

12 MR. CORRIGAN: Objection.

13 A. I --

14 MR. CORRIGAN: Lack of foundation, improper
15 form.

16 A. I -- I don't know.

17 Q. Sir, did you approve this contract before it was
18 signed by the parties?

19 MR. CORRIGAN: Objection, lack of
20 foundation.

21 A. December 1992. Did I approve?

22 Q. Yes.

23 A. In my capacity as managing director tobacco for
24 B.A.T Industries, I did not have to approve an
25 agreement. It will -- it's an agreement between the

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1 parties.

2 Q. Did you review this contract, Exhibit 694,

3 before it was signed by the --

4 A. I'm not sure I did.

5 Q. You've got to let me finish.

6 A. Oh, I'm sorry.

7 Q. All right.

8 A. I thought you had.

9 Q. Let me ask it again. Did you -- strike that.

10 Did you review this contract, Exhibit 694,

11 before it was signed by BATCO and Brown & Williamson?

12 A. I may have, but I haven't -- I haven't any
13 recollection of that.

14 Q. Is it standard practice for -- strike that.

15 Was it standard practice when you were managing
16 director of the tobacco group for B.A.T Industries to
17 review contracts between members of the group?

18 A. Not standard practice.

19 Q. But you could have seen this; right?

20 A. I could have seen.

21 MR. CORRIGAN: Objection.

22 Q. Sir, do you understand -- I'm -- strike that.

23 (Plaintiffs' Exhibit 698 was marked
24 for identification.)

25 BY MS. WIVELL:

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1 Q. Sir, showing you what's been marked as
2 Plaintiffs' Exhibit 698, this is a document that
3 begins with the Bates -- or I'm sorry, strike that.

4 Exhibit 698 is a document bearing the Bates
5 number 201069744; right?

6 A. Bates number 201069744.

7 Q. Correct?

8 A. Correct.

9 Q. All right. It's a letter from Earl Kohnhorst to
10 Stuart Chalfen, the solicitor at B.A.T Industries
11 P.L.C.

12 A. It's a letter from Earl Kohnhorst, executive
13 vice-president of Brown & Williamson Tobacco
14 Corporation, to Mr. Stuart Chalfen, B.A.T Industries.

15 Q. Sir, take a moment and look the document over.

16 A. I've read it.

17 Q. Now this document, Exhibit 698, refers to the
18 contract which is Exhibit 694.

19 A. 694. I have to find it again.

20 It refers to an R&D cost-sharing,
21 confidentiality and license agreement. This letter
22 is dated July 14th, 1992. And the R&D cost-sharing,
23 confidentiality and the license agreement on the
24 Exhibit 694 is dated 23rd of December 1992, and that
25 is after -- that is after this memo was written.

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1 So --

2 Q. Sir, just so we're clear, Mr. Kohnhorst enclosed
3 an executed, quote, "R&D Cost Sharing,
4 Confidentiality and Licence Agreement;" right?

5 MR. CORRIGAN: Well objection. That's what
6 the document says. Are you asking him whether in
7 fact the enclosure was there? I object.

8 A. The document says, "You will find enclosed the
9 executed 'R&D Cost Sharing, Confidentiality and
10 Licence Agreement.'" But the enclosure is not
11 available to me.

12 Q. All right. Now sir, he goes on to say, "On the
13 advice of our counsel, the following paragraph will
14 be a continuing condition to B&W's obligation under
15 the agreement." Right?

16 A. That is what the -- what he says in that
17 paragraph, yes.

18 Q. And he goes on to say, "B&W intends to fully
19 comply with the agreement consisting with the --
20 consistent with the status of pending product
21 liability litigation in the United States.
22 Specifically, as discussed, B&W will comply with any
23 future request concerning the transfer of documents
24 under clause 5, paren, 3, paren, or to the provisions
25 of clause 6, to the extent we are able to do so

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1 consistent with the status of pending product
2 liability litigation in the United States at the time
3 of any such request." Correct?

4 A. That is what the document says.

5 Q. Now despite the fact that Exhibit 694 is dated
6 December 12th, 1992, it does have a paragraph 3.C.
7 concerning -- I'm sorry, it does have a paragraph
8 5(3) concerning the immediate return of BATCO
9 documents upon request; doesn't it?

10 MR. CORRIGAN: Objection. Paragraph 5(3)
11 says what it says.

12 A. The document dated 23rd December 1992 under 5(3)
13 has a paragraph which deals with that, but that is --
14 whether that is the same paragraph which is referred
15 to in Mr. Kohnhorst's letter of July 14th, 1992, I'm
16 unable to say.

17 Q. We just don't know; do we, sir?

18 MR. CORRIGAN: Well let me object.

19 A. I don't know.

20 Q. All right.

21 MR. CORRIGAN: If --

22 There was obviously an enclosure that's not
23 attached to Exhibit 698.

24 Q. And sir, we don't know whether the paragraph
25 that appears at 5(3) of Exhibit 694 is the same

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1 paragraph that was in the document referred to by
2 B&W; do we?

3 A. I don't -- I don't know whether it is the same
4 paragraph.

5 Q. Why was Mr. Kohnhorst sending this exhibit -- or
6 this -- strike that.

7 Why was Mr. Kohnhorst sending the cost-sharing
8 agreement to Stuart Chalfen at B.A.T Industries
9 P.L.C. if it was between BATCO and Brown &
10 Williamson?

11 MR. CORRIGAN: Objection, calls for
12 speculation as to the author of the document other
13 than the witness.

14 A. I don't know.

15 Q. Can you give us any clue as to why Stuart
16 Chalfen was involved in the drafting or the signing
17 of the R&D cost-sharing agreement between BATCO and
18 B&W?

19 MR. CORRIGAN: Objection, speculation.

20 A. I have no -- I --

21 I simply don't know. And I don't have any clue
22 whether he was involved in -- what did you say,
23 "signing and drafting?"

24 Q. Yes, sir.

25 A. I have no -- no clue. The documents don't say

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1 that.

2 Q. Well sir, isn't it a fact that the reason Stuart
3 Chalfen was involved is because the B.A.T Industries
4 board was involved in approving this contract?

5 MR. CORRIGAN: Objection, mischaracterizes
6 the prior record, and improper in form.

7 A. I have no idea that the B.A.T Industries board,
8 as you say, was involved in -- in that agreement. No
9 idea.

10 MS. WIVELL: Why don't we take a lunch
11 break.

12 MR. CORRIGAN: Sure.

13 THE REPORTER: Off the record, please.

14 (Luncheon recess taken at 12:27 o'clock
15 p.m.)

16 (Exhibit 699 was marked
17 for identification.)

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1 AFTERNOON SESSION

2 (Deposition reconvened at 1:45 o'clock

3 p.m.)

4 BY MS. WIVELL:

5 Q. Sir, for the record, would you please identify
6 Plaintiffs' Exhibit 699?

7 A. I gave my business card, B.A.T Industries, and
8 it is marked as Plaintiffs' Exhibit 699.

9 Q. And according to that business card, what is
10 your current title?

11 A. My current title is Managing Director Tobacco,
12 B.A.T Industries.

13 Q. All right. And, sir, that is your present
14 position; isn't it?

15 A. That is my present title as far as B.A.T
16 Industries is concerned.

17 MR. CORRIGAN: We'll make some extra copies
18 of this.

19 MS. WIVELL: Thank you.

20 MR. CORRIGAN: Then give it back.

21 BY MS. WIVELL:

22 Q. Now sir, after you joined B.A.T. Cigaretten
23 Fabriken, you learned that a change was being made
24 concerning the Southampton research facility that
25 we've been talking about; didn't you?

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1 MR. CORRIGAN: Object to the form.

2 A. A change was made to the Southampton research
3 facility?

4 Q. Well yes. After you joined B.A.T. Cigaretten
5 Fabriken, did you learn that the purpose of the work
6 that was being done at the Southampton facility
7 changed?

8 MR. CORRIGAN: Objection to the form.

9 A. Purpose of the research facility in
10 Southampton. "Purpose" is your question.

11 I'm not sure that I understood that the purpose
12 of the research facility in Southampton had changed.
13 Maybe the way they conduct their work.

14 (Plaintiffs' Exhibit 700 was marked
15 for identification.)

16 BY MS. WIVELL:

17 Q. Sir, showing you what's been marked as
18 Plaintiffs' Exhibit 700, this is a document that
19 begins with the Bates number 102391127; right?

20 A. Correct.

21 Q. And this concerns a MDP 64 --

22 By the way, an MDP is a management development
23 program; isn't it?

24 A. I'm not sure what it -- what it stands for.

25 Q. All right. Nonetheless, it says "MDP 64

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1 (Tobacco) - Business Project, Achieving Operating
2 Company Integration for BATUKE R&D Centre;" correct?

3 A. That's what it says.

4 Q. Now have you seen this document before, sir?

5 A. I don't think so.

6 Q. Why don't you take a moment and read it.

7 MR. BEZANSON: Ms. Wivell, excuse me,
8 what's the last Bates number on this document?

9 MR. CORRIGAN: 134. 102391134.

10 MR. BEZANSON: Thank you.

11 Q. Sir, I see you've gotten to the last couple of
12 pages, and I'm not going to be asking you any
13 questions about those. If you feel comfortable, I
14 think we might be able to speed things up if we move
15 on.

16 A. I have read it. Was waiting for your question.

17 If it's necessary to read the rest, then --

18 Q. I'll give you the opportunity.

19 A. Thank you.

20 Q. Now sir, having read the first few pages of this
21 document, does it refresh your recollection that a
22 reorganization took place at the Southampton research
23 and development facility in 1985?

24 A. That is what --

25 MR. CORRIGAN: Object to the form of the

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1 question. I don't think he indicated he needed to
2 have his recollection refreshed, but he may answer.

3 A. This talks about a reorganization, and I take it
4 as a fact that this organization -- reorganization
5 took place.

6 Q. Do you recall essentially that that
7 reorganization did take place in 1985?

8 A. I was marketing director of B.A.T. Cigaretten
9 Fabriken, so I have -- I was not involved in the
10 reorganization, but it is a permanent feature that
11 things within the group are reorganized, and I have
12 no doubt that what is said here is correct, that the
13 research facility in Southampton was reorganized at
14 that time.

15 Q. All right. Now the research facility had been
16 established as the centralized and major unit of the
17 research effort for B.A.T Industries before then;
18 isn't that true?

19 MR. CORRIGAN: Object to the phraseology
20 "research effort for B.A.T Industries."

21 A. The document says on page two, "The Group
22 Research & Development Centre was established in
23 Southampton over thirty years ago," '85, so that is
24 '55, "as the major and centralized unit of BAT
25 Industries Tobacco interests," and then it says, "(Of

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1 course, in 1955, there was no 'Industries' structure
2 as such."

3 Q. And do you understand that -- that B.A.T
4 Industries was not in existence in 1955?

5 A. That is what I understand, yeah.

6 Q. All right. But at that time you understand that
7 the group research and development facility at
8 Southampton was the major research facility for the
9 then-existing BAT Group; right?

10 MR. CORRIGAN: Object to the form.

11 A. I have no special or detailed knowledge about
12 that. We are talking 1955, I assume, and I have no
13 idea whether that was a research facility then in
14 B.A.T. Cigaretten Fabriken or anywhere else in the
15 group,, but I -- I assume there was, so the research
16 facility in Southampton was one of the research
17 facilities of the BATCO Group then.

18 Q. All right. Now sir, in the next paragraph it
19 refers to the center having suffered from various
20 symptoms, including the, quote, veil of secrecy,
21 quote, syndrome. Do you know to what that refers?

22 A. No.

23 Q. Now you understand that in 1985 the B.A.T
24 Industries tobacco operating companies decided to
25 reorganize the Group Research & Development Center at

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1 Southampton.

2 MR. CORRIGAN: Object to the form of the
3 question. I think the witness has already testified
4 as to what he understood.

5 A. What I understand from the document is that
6 BATCO decided to reorganize its research facility.

7 Q. Well sir, can you look at the quote from E. A.
8 A. Bruell on the first page of Exhibit 700. Doesn't
9 it say there, "BAT Industries Tobacco Operating
10 Groups have re-assessed overall R&D needs and, as a
11 consequence, it has become necessary to implement a
12 reorganisation of GR&DC Southampton?"

13 A. That is a quote from Mr. Bruell, 25th April
14 1985, and you read it correctly.

15 Q. And what was Mr. Bruell's position as of that
16 date, sir?

17 A. As of the date 25th April 1985? I think he was
18 chairman of BATCO. 1985. Yeah.

19 Q. Now sir, at the time of this reorganization --
20 strike that.

21 At the same time that the Southampton group
22 research and development facility was doing research
23 on behalf of the BAT Group, the other companies, like
24 Brown & Williamson and Cigaretten Fabriken, also
25 developed capabilities for research, didn't they?

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1 MR. CORRIGAN: Object to the form.

2 A. I know that in 1985 B.A.T. Cigaretten Fabriken
3 had a research and development center, and I also
4 know that Brown & Williamson had a research and
5 development center or facility. Whether they called
6 it a center I don't know.

7 Q. Sir, it was decided in 1985 -- no, strike that.

8 The research that had been done in Southampton
9 before 1985 had been largely an effort to produce
10 cigarettes with reduced biological activity. Isn't
11 that true?

12 MR. CORRIGAN: Object to the form of the
13 question, asking the witness to characterize research
14 that took place prior to his arrival at the company.

15 A. I have no detailed knowledge whether the
16 research and development center in Southampton had
17 the only and/or overriding objective of developing a
18 cigarette with reduced biological activity. I think
19 that is -- that was your question.

20 Q. Well I'm not sure if I was focusing on the
21 overriding objective. But did you understand that
22 before 1985 the chemistry research at Southampton had
23 been, in large part, devoted to trying to develop a
24 cigarette with a reduced biological activity?

25 MR. CORRIGAN: Same objection.

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1 A. I -- I have no detailed knowledge of that, so I
2 cannot answer the question.

3 Q. Sir, showing you what's previously been marked
4 as Plaintiffs' Exhibit 537, this is a document that
5 begins with the Bates number 500012128; right?

6 A. That's correct.

7 Q. And it's from July 14th, 1967, and is entitled
8 "Current Chemistry Research at Southampton."

9 A. That is the title of that document dated July
10 14th, 1967.

11 Q. All right. Would you take a moment or two and
12 review the first couple of pages of this document.

13 A. The first two?

14 Q. Yeah.

15 A. I've read the first two pages of that document.

16 Q. All right. Sir, the first page especially
17 describes the chemistry research at Southampton as of
18 the date of the memo; doesn't it?

19 MR. CORRIGAN: Well let me object to the
20 form. The document says what it says on the first
21 page.

22 A. I have to reread -- reread that because it is
23 very technical, so --

24 Q. Let me direct your attention to the second and
25 third paragraphs of the first page.

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1 A. Second and third paragraphs.

2 So what was the question?

3 Q. My question is, sir: The document describes the
4 chemistry research at Southampton as of the date of
5 the memo; doesn't it?

6 MR. CORRIGAN: Same objection.

7 A. Well I read from --

8 What I understand reading the document, it says
9 that chemistry research at Southampton is largely a
10 development effort to produce cigarettes with reduced
11 biological activity, so what I take from that is they
12 did chemistry research. Whether that is all what
13 they did, I cannot detect from the document.

14 Q. I understand. But it says that that's largely
15 what they did; right?

16 MR. CORRIGAN: Objection. Witness read the
17 sentence into the record. It speaks for itself.

18 A. It says --

19 What I understand is that the chemistry research
20 carried out in Southampton is a development --
21 largely a development effort to produce cigarettes
22 with reduced biological activity. I cannot detect
23 from there that -- whether that is all what they do.

24 I just can't.

25 Q. Now --

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1 A. I can only repeat myself, so --

2 Q. All right. Sir, what do you understand it to
3 mean when it's talking about research devoted to
4 reducing biological activity?

5 MR. CORRIGAN: Objection to the form.

6 A. I understand what it says.

7 Q. Well what do you understand a cigarette with
8 reduced biological activity to be?

9 MR. CORRIGAN: Same objection.

10 A. In July 14th, 1967, it was written. I don't --
11 I don't know what they understood in those days under
12 biological activity and how they would measure that.
13 I have no knowledge about that.

14 Q. All right. Sir, as you sit here today, let me
15 ask you this: Are any of the B.A.T Industries
16 companies working on a cigarette of reduced
17 biological activity?

18 MR. CORRIGAN: Object to the form of the
19 question.

20 Let me just caution the witness that, before he
21 answers, that if your answer would involve a trade
22 secret or highly confidential information, please let
23 counsel know. Take appropriate steps.

24 A. What I understand what is done today is that
25 biological activity of certain products is tested by

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1 appropriate tests. That is what I understand.

2 Q. And I'm not sure I make myself clear. Is there
3 a program now to try and develop a cigarette with
4 reduced biological activity at any one of the B.A.T
5 Industries tobacco companies?

6 MR. CORRIGAN: Same objection. Same
7 caution.

8 A. I don't -- I -- I don't know.

9 Q. Well can you --

10 A. That biological activity is measured by
11 appropriate tests. That is -- I know that is the
12 case. But whether that is an effort to produce
13 cigarettes with reduced biological activity, I don't
14 know.

15 Q. Sir, it says here in the second paragraph that
16 as of 1967, current studies on the design of, quote,
17 safe, quote, cigarettes fall into several main
18 approaches, and then it talks about those approaches;
19 right?

20 A. Second paragraph?

21 Q. Third.

22 A. Third. I'm sorry.

23 "Current studies on the design of 'safe'
24 cigarettes," "safe" in quotes, "fall into several
25 main approaches." And then four approaches are

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1 mentioned: one, synthetic tobacco substitutes,
2 cigarettes incorporating a large percentage of air-
3 cured tobacco, third, smoking products delivering
4 smoke with a high nicotine/tar ratio, and four,
5 selective filtration.

6 Q. All right. Are there any activities currently
7 going on within B.A.T Industries tobacco companies to
8 develop a, quote, safe, quote, cigarette?

9 MR. CORRIGAN: Objection to the form, and
10 objection on relevancy grounds.

11 A. I think we don't develop a safe cigarette
12 because there is no definition for a safe cigarette.

13 Q. Well I'm using the word that was used in this
14 document that was produced to us by one of the
15 defendants in this case about what was going on at
16 Southampton, and it uses the word, quote, "safe"
17 cigarette. So to your knowledge, sir, using the
18 word, quote, "safe," in -- in quotes, or using that
19 word in quotes, is there research going on in any of
20 the B.A.T Industries companies today to develop a
21 safe cigarette?

22 MR. CORRIGAN: Objection, asked and
23 answered. Further objection, you're trying to use a
24 '67 document and transport it today. It's improper.

25 A. I cannot answer the question because I do not

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1 understand what they meant in 1967 to be a safe
2 cigarette. There is no definition in there, and
3 therefore I cannot answer your question.

4 Q. All right. Well, sir, is there any attempt
5 going on at B.A.T. in any of the B.A.T Industries
6 companies, the tobacco companies today, to try and
7 make a cigarette which would be less hazardous to the
8 person who smoked it?

9 MR. CORRIGAN: Object to the form.

10 A. Again, it would have to be defined what "less
11 hazardous" means, and not only defined by us, but
12 mainly by governments or government agencies, so that
13 one would exactly know what a less hazardous
14 cigarette would be. What we do year in and year out
15 is that we try to improve our cigarettes from quality
16 standards, meet regulations which are in place in
17 several parts of the world. For example, here in the
18 European community -- European Union there are
19 certain tar maximums -- or there is a tar maximum to
20 which -- or you have to produce your cigarettes,
21 otherwise you cannot market them. And yes, we are
22 developing better products, improved products.

23 THE REPORTER: We have to change tape. Off
24 the record, please.

25 (Discussion off the record.)

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1 BY MS. WIVELL:

2 Q. Sir, what do you mean by "better products,
3 improved products?"

4 A. Better tasting products as judged by the
5 consumers. Better quality products, I mean physical
6 qualities, firmness of the cigarette. All those
7 would fall into a -- into the category -- category I
8 described as a better product.

9 Q. Well sir, do any of those things have to do with
10 making a product that is less biologically hazardous
11 for the smoker?

12 MR. CORRIGAN: Object to the form of the
13 question.

14 A. I cannot answer that question. I'm not a
15 scientist.

16 Q. Well sir, Exhibit 699 says that you're the
17 managing director of tobacco for B.A.T Industries,
18 and in that position can you point the ladies and
19 gentlemen of the jury to one single project which is
20 going on today within any of the B.A.T Industries
21 tobacco companies to try and make a cigarette which
22 is safer for the people who smoke it?

23 MR. CORRIGAN: Object to the form of the
24 question. Witness has already explained how that's
25 not possible to be answered.

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1 A. We cannot develop a safer or safe -- yeah, safer
2 cigarette if there is no definition what that is.
3 And that is not a definition we can give ourselves,
4 that is a definition which have -- which -- which --
5 which would have to be accepted by regulatory bodies
6 within the world --

7 Q. Sir, --

8 A. -- or in specific countries.

9 Q. -- do you believe cigarette smoking has caused
10 illness in any one person?

11 MR. CORRIGAN: Object to the form of the
12 question.

13 A. I believe cigarette smoking is a risk factor.

14 Q. I'm not talking about risk factors. I'm talking
15 about has smoking cigarettes, in your opinion, caused
16 disease in a single person in the world, ever?

17 MR. CORRIGAN: Same objection.

18 A. I cannot tell you. I gave you my answer. I
19 believe that cigarette smoking is a risk factor. A
20 risk factor.

21 Q. And as you sit here today, you do not believe
22 that cigarette smoking has caused illness in a single
23 person; is that true?

24 MR. CORRIGAN: Objection, asked and
25 answered.

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1 A. I said that cigarette smoking is a risk factor
2 for certain diseases. That is what I can -- what I
3 can say.

4 Q. What's a risk factor, sir?

5 A. A risk factor is if you smoke, that you run a
6 higher risk to develop certain diseases.

7 Q. All right. Putting that aside, does cigarette
8 smoking cause -- strike that.

9 Does cigarette smoking contribute in any way to
10 disease in human beings?

11 MR. CORRIGAN: Object to the form of the
12 question.

13 A. Cigarette smoking is a risk factor. I have said
14 that.

15 Q. Are you done, sir?

16 A. Yes.

17 Q. Move to strike, non-responsive.

18 I understand that you believe that people who
19 smoke cigarettes run a higher risk to develop certain
20 diseases, and I'm asking you a different question,
21 sir. Does cigarette smoking contribute in any way to
22 a person getting disease?

23 MR. CORRIGAN: Objection. You just posed
24 that question to him. He just answered it. You're
25 now asking it again.

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1 A. I regard cigarette smoking as a risk factor.
2 Q. I understand that. I think the jury's going to
3 be pretty clear that you do. And I'm asking a
4 different question, sir, so I'm going to move to
5 strike as non-responsive.

6 Sir, does cigarette smoking contribute in any
7 way to disease in smokers?

8 MR. CORRIGAN: Same objection.

9 A. I tried to be helpful, but I think I have
10 answered your question two or three times, and I -- I
11 personally cannot answer that question. I'm not a
12 scientist. And that is what I understand, having
13 consulted my -- my scientists, that smoking is a risk
14 factor.

15 MS. WIVELL: Can we go off the record for a
16 moment, please.

17 THE REPORTER: Off the record, please.

18 (Discussion off the record.)

19 BY MS. WIVELL:

20 Q. Sir, I'm going to show you a pack of Kools that
21 we have marked as Plaintiffs' Exhibit 309. Would you
22 please read the Surgeon General's warning that's on
23 the side of that package.

24 A. "SURGEON GENERAL'S WARNING: Smoking Causes Lung
25 Cancer, Heart Disease, Emphysema, And May Complicate

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1 Pregnancy."

2 Q. Sir, as B.A.T Industries' managing director of
3 tobacco, do you agree with what the Surgeon General
4 says on that pack of cigarettes?

5 A. I do agree that the Surgeon General's entitled
6 to say that. We -- we accept that. But as this
7 warning says, it is the Surgeon General's assessment.

8 Q. Well I understand the Surgeon General has a
9 right to say that. My question is, sir, do you agree
10 with the Surgeon General's statement that cigarette
11 smoking may cause those diseases?

12 MR. CORRIGAN: Objection, asked and
13 answered.

14 A. I agree that smoking is a risk factor, as I
15 understand from our scientists, for the diseases
16 stated in this health warning.

17 Q. Move to strike as non-responsive.

18 My -- my question is, sir, not whether it is a
19 risk factor, but I'm asking: Do you, as the managing
20 director of tobacco for B.A.T Industries, agree with
21 the Surgeon General of the United States that
22 cigarette smoking causes the diseases that are listed
23 on that package of cigarettes?

24 MR. CORRIGAN: Objection, asked and
25 answered twice.

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1 A. Can I have the question, hear that question
2 again, please?

3 Q. Yes, sir.

4 As managing director of tobacco for B.A.T
5 Industries, do you agree with the Surgeon General of
6 the United States that cigarette smoking causes the
7 diseases which are listed on that package of
8 cigarettes?

9 MR. CORRIGAN: Same objection.

10 A. Being advised -- or having been advised by
11 scientists which we employ -- whom we employ, smoking
12 is a risk factor for the diseases stated here.

13 Q. Move to strike as non-responsive.

14 Sir, do you agree or do you disagree, you
15 personally?

16 A. I gave you my --

17 MR. CORRIGAN: Objection. It's been
18 answered three times.

19 A. And my answer is my answer.

20 Q. Well, does B.A.T Industries agree with the
21 Surgeon General of the United States?

22 MR. CORRIGAN: Objection.

23 A. "Does B.A.T Industries?" What do you mean by

24 "B.A.T Industries?"

25 Q. Well does B.A.T Industries P.L.C. agree with the

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1 Surgeon General of the United States, that cigarette
2 smoking causes the diseases that are listed on that
3 package?

4 MR. CORRIGAN: Objection on grounds
5 previously stated.

6 A. B.A.T Industries, as advised by its scientists
7 of the operating -- operating companies, agrees that
8 smoking is a risk factor.

9 Q. But the cigarette -- or I'm sorry. Strike that.

10 The Surgeon General doesn't call cigarette
11 smoking a risk factor there; does he?

12 MR. CORRIGAN: Objection.

13 A. No. What the Surgeon General says is clear. It
14 is printed here on the pack.

15 Q. Has B.A.T Industries ever told the public that
16 it agrees with the Surgeon General that cigarette
17 smoking causes the diseases that are listed there?

18 MR. CORRIGAN: Objection.

19 A. I'm not aware of that.

20 Q. Now sir, showing you what's been marked as
21 Plaintiffs' Exhibit 172, would you please read the
22 side of what's written on that package of Kool
23 cigarettes?

24 A. "SURGEON GENERAL'S WARNING: Smoking By Pregnant
25 Women May Result in Fetal Injury, Premature Birth,

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1 And Low Birth Weight."

2 Q. Does -- I'm sorry. Strike that.

3 Do you, sir, as the managing director of tobacco
4 for B.A.T Industries, agree with what the Surgeon
5 General had Brown & Williamson put on the side of
6 that cigarette package?

7 MR. BEZANSON: Object to the form.

8 A. What the warning says is "may result," and that
9 may be right.

10 Q. Have you ever --

11 Has B.A.T Industries ever told the public that
12 what the Surgeon General said there on the side of
13 that package of -- pack of Kool cigarettes may be
14 right?

15 MR. CORRIGAN: Object to the form.

16 A. I'm not aware of that.

17 Q. You can't direct me to any public statement by
18 B.A.T Industries telling the public who smoke any of
19 its cigarettes that it -- that the Surgeon General
20 may be right in what he says on that cigarette pack;
21 right?

22 MR. CORRIGAN: Objection. He just answered
23 that question.

24 A. I do not recall whether any of the officers or
25 employees has made that -- of B.A.T Industries P.L.C.

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1 has made that statement.

2 Q. Sir, have you ever told the public in any
3 statement that you've made that the Surgeon General
4 may be right on what it says about premature birth
5 and low birth weight?

6 MR. CORRIGAN: Objection to form.

7 A. No, I haven't.

8 Q. Sir, I'm going to show you what's been marked as
9 Plaintiffs' Exhibit 348 and ask you to read what the
10 Surgeon General had Brown & Williamson put on the
11 pack of that cigarette.

12 A. "SURGEON GENERAL'S WARNING: Quitting Smoking
13 Now -- Quitting Smoking Now Greatly Reduces Serious
14 Risk to Your Health."

15 Q. Sir, as the managing director of tobacco for
16 B.A.T Industries, do you agree with that statement?

17 A. Smoking is a risk factor. Stopping smoking
18 should reduce the risk. Whether it's correct, now,
19 "Greatly Reduces Serious Risk to Health," I don't
20 know. But as a risk factor, if you remove that --

21 Q. You said earlier you're a smoker.

22 A. Yes, I am a smoker.

23 Q. Now doctors have told you to stop smoking;
24 haven't they, sir?

25 MR. CORRIGAN: Object to the form.

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1 A. Who has told me? I didn't get the question.

2 Q. Physicians have told you -- recommended to you
3 to stop smoking; haven't they?

4 MR. CORRIGAN: Objection.

5 A. I have to think. Have physicians told me to
6 stop smoking?

7 Yes.

8 Q. And you keep smoking; don't you?

9 A. I --

10 MR. CORRIGAN: Object to the form.

11 A. -- keep --

12 I smoke.

13 Q. And you have continued to smoke since physicians
14 told you or recommended to you to stop smoking;
15 haven't you?

16 A. Yes. Yes.

17 Q. Was it reasonable for you to do that?

18 MR. CORRIGAN: Object to the form of the
19 question.

20 A. It was my personal choice.

21 Q. Well was it a reasonable choice?

22 MR. CORRIGAN: Objection.

23 A. I think so.

24 Q. All right. And it would be similarly reasonable
25 for other people who smoke cigarettes manufactured by

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1 the BAT Group who have been told by doctors to quit
2 smoking, would be reasonable for them to continue to
3 smoke; wouldn't it, sir?

4 MR. CORRIGAN: Objection, it's calling for
5 the witness to venture into the operations of
6 hypothetical people's minds.

7 A. Other people have to make up their own mind. I
8 cannot speak for other people.

9 Q. And it would be important for the people who
10 smoke the cigarettes that made -- that are made by
11 the tobacco companies within the BAT Group to have
12 all of the information about the hazards and risks
13 associated with smoking in order to be able to
14 properly make up their mind; wouldn't they, sir?

15 MR. CORRIGAN: Same objection.

16 A. The people who choose to smoke should know that
17 smoking is a risk factor.

18 Q. Well, has Brown and -- I'm sorry, strike that.

19 Has the tobacco companies within B.A.T
20 Industries, apart from the Surgeon General's warnings
21 on the cigarette packs, come out and told smokers
22 that smoking is a risk factor, as you say?

23 MR. CORRIGAN: Objection to the form.

24 A. I'm sure that different -- or several of the
25 operating companies have communicated, when asked,

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1 that smoking is a risk factor.

2 Q. Well did Brown & Williamson, for example, to
3 your knowledge, take out ads to tell people that
4 smoking might be dangerous to their health?

5 MR. CORRIGAN: Objection to the form.

6 A. I don't know. Can't answer the question.

7 Don't --

8 I just don't know.

9 Q. Now sir, turning back to the issue of the
10 biological research at Southampton, isn't it a fact
11 that the effort to produce cigarettes of reduced
12 biological activity at Southampton stopped in 1985
13 because, essentially, the biology research program
14 was terminated?

15 MR. CORRIGAN: Object to the form of the
16 question.

17 A. I don't know whether it stopped or did not stop
18 in 1985.

19 Q. Sir, showing you what's previously been marked
20 as Plaintiffs' Exhibit 496, this is a document that
21 begins with the Bates number 109070965; right?

22 A. That's correct.

23 Q. Why don't you take a moment and read it.

24 A. I've read the document.

25 Q. Sir, Exhibit 496 concerns the reorganization of

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1 the Group Research & Development Center that occurred
2 in 1985.

3 MR. CORRIGAN: Object to the form.

4 A. The reorganization of the BATCO.

5 Q. You understand we're talking about Southampton;
6 right?

7 A. Southampton as part of BATCO.

8 Q. All right. And if we turn to the page that ends
9 with 969, it says there that the biological research
10 was terminated except for a small team using Ames and
11 related in vitro tests; right?

12 A. Can I just find the page?

13 969. Yeah. "Detailed changes affecting R&D
14 activities are," first, "Biological Research:
15 terminated, except for a small team using Ames and
16 related 'in vitro' tests."

17 Q. Sir, do you understand or do you know what the
18 Ames test is?

19 A. It is -- I understand it's -- it is a test, in
20 vitro test for biological activity.

21 Q. And sir, did --

22 Do you understand that the biological research,
23 with the exception of those two items, was terminated
24 at Southampton as of 1985?

25 MR. CORRIGAN: Object to the form of the

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1 question.

2 A. That is what the document says, "Biological
3 Research: Terminated." I have no detailed knowledge
4 what kind of biological research was going on at that
5 time.

6 Q. Well sir, isn't it true that all animal work
7 in-house ceased as a result of this reorganization?

8 MR. CORRIGAN: Objection to the form.

9 A. I don't know. As I said, I don't know what kind
10 of research -- biological research at that time was
11 going on in Southampton.

12 (Plaintiffs' Exhibit 701 was marked
13 for identification.)

14 BY MS. WIVELL:

15 Q. Sir, showing you what's been marked as
16 Plaintiffs' Exhibit 701, this is a document that
17 bears the Bates number 301122597, right?

18 A. Correct.

19 Q. It's entitled "TOBACCO RESEARCH IN BAT
20 INDUSTRIES."

21 A. That is what the headline says.

22 Q. All right. Would you turn to the page that ends
23 with Bates number 600. There is a chart entitled
24 "GR&DC - as at 1 January 1985." Right?

25 A. That's correct.

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1 MR. CORRIGAN: Let the record reflect that
2 both the first page of the document and this page are
3 marked "DRAFT."

4 Q. Sir, the chart shows under "PRODUCT RESEARCH"
5 the subject heading "Biological" with a number 15
6 behind it; right?

7 A. That is what it says here, "PRODUCT RESEARCH,
8 Biological," in brackets, "15."

9 Q. All right. Would you turn to the next page, and
10 there is a graph or a chart entitled "GR&DC -
11 PROPOSED;" right?

12 A. That is what the headline says of that page.

13 Q. By the way, --

14 A. "DRAFT."

15 Q. -- just so we're clear, GR&DC is the Group
16 Research & Development Center at Southampton; isn't
17 it?

18 A. For BATCO, yes.

19 Q. And under the proposed scheme of organization,
20 it shows "RESEARCH" and then "Biology" with only the
21 number five behind it; true?

22 A. "Biology (5)."

23 Q. Would you turn to the page that ends with Bates
24 number 607.

25 A. I am on -- on page 607.

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1 Q. All right. Would you --

2 MR. CORRIGAN: Let me just note:

3 Apparently all of the pages of the document are
4 marked "DRAFT," including this page.

5 Q. Would you read to yourself what it says under
6 "Biological Research."

7 A. "Biological Research.

8 "All in-house animal work will cease and future
9 studies involving animals will be done externally
10 under contract. A Senior Research Scientist will be
11 retained to co-ordinate external work and to provide
12 expertise in toxicology. In vitro short term tests,
13 such as the Ames test, will be retained, since these
14 are used for product screening and could form the
15 basis of a biological league table. Project Rio uses
16 the Ames test predominantly and whilst it is a long
17 project, initial phases could be completed by Autumn
18 with the proposed resources."

19 Q. All right. Sir, do you have any information as
20 you sit here today that would contradict the
21 statement there that all in-house animal test work
22 would cease?

23 A. I have no information which would contradict
24 that. When it says here "all in-house animal work
25 will cease," that is what it says.

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1 Q. All right. Now it goes on to talk about the
2 Ames test being used possibly as the basis for a
3 biological league table. What do you understand that
4 to mean?

5 MR. CORRIGAN: "That" being biological
6 league table?

7 MS. WIVELL: Yes.

8 MR. CORRIGAN: Object to the form.

9 A. That the short-term Ames test, as it says here,
10 would be used -- or the results of the tests would be
11 used to rank products -- to rank products, yes.

12 That's what I would understand.

13 Q. On what basis would these products be ranked,
14 sir?

15 A. On the basis of the Ames test, Ames test, as
16 it -- as it says here.

17 Q. What do you understand the Ames test to be?

18 MR. CORRIGAN: Objection, he -- you already
19 asked him that exact question and he answered it.
20 You may answer again.

21 A. An in vitro test to measure short-term
22 biological activity of the tested material.

23 Q. What do you mean by "biological activity of the
24 tested material?"

25 A. As shown by the Ames test.

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1 I'm not a scientist. I'm sorry. That is the
2 understanding I have, and I cannot go into more
3 detail because I'm not aware of what it -- what it is
4 specifically.

5 Q. Well sir, isn't the Ames test used to
6 distinguish products which have a lower biological
7 activity?

8 MR. CORRIGAN: Object to the form. He's
9 already testified what his understanding was.

10 A. The Ames test is a test to measure short-term
11 biological activity. I also understand that there
12 are other tests which do the same.

13 Q. What other tests do that?

14 A. I don't -- I don't know. I just know that there
15 are other measures or other tests, and they may
16 produce, is also what I understand, that they may
17 produce the same results and they may produce other
18 different results.

19 Q. Sir, showing you what's been marked previously
20 as Plaintiffs' Exhibit 323 --

21 A. Could I have a break, please?

22 Q. Oh, surely.

23 A. Is that possible?

24 MR. CORRIGAN: Yeah.

25 THE WITNESS: Yeah?

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1 THE REPORTER: Off the record, please.

2 (Recess taken.)

3 BY MS. WIVELL:

4 Q. Sir, showing you what's been marked as

5 Plaintiffs' Exhibit 323, this is a document that

6 bears the Bates number 100593366 as its beginning

7 Bates number; right?

8 A. Correct.

9 Q. Would you turn to the third page of Exhibit
10 323. There is a chart with various types of research
11 listed in the left-hand column; correct?

12 A. Yes.

13 Q. And the top says "BIOLOGICAL RESEARCH;" correct?

14 A. Correct.

15 Q. And then over on the right-hand column it says
16 "All animal work to be terminated a.s.a.p. Finish
17 current work on animal tissues (including tissues
18 from animals just killed) and report within 3
19 months." Right?

20 A. That's what it says.

21 Q. And it continues --

22 A. "Stop current work within two months. Report
23 progress."

24 Q. Exactly. I was just going to continue on.

25 And sir, the animal work and work on animal

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1 tissues that had been going on at Southampton was
2 terminated as a result of this reorganization; wasn't
3 it?

4 A. That is what the document says.

5 Q. Now below the "BIOLOGICAL RESEARCH" section it
6 talks about additional work which was also
7 terminated; isn't that true?

8 A. Additional work.

9 MR. CORRIGAN: Can you direct the witness
10 to something, please?

11 Q. All right. Well let me rephrase the question.

12 Also, smoker behavior work that had been ongoing
13 was terminated; wasn't it?

14 A. "SMOKER BEHAVIOUR: Finish current work;
15 report. Make arrangements for supervision of
16 contract work (GS)," whatever that means. "Finish
17 current work. Report." That is what it says.

18 Q. All right. And nicotine pharmacology work, work
19 on smoke inhalation and work on aerosol retention
20 that had been going on at Southampton at the time
21 were terminated; weren't they?

22 MR. CORRIGAN: Object to the form.

23 A. The schedule here says "Finish current work;
24 report. Make arrangements for supervision of
25 contract work." So in-house work in those areas, as

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1 I would understand from that, was terminated, but
2 contract work -- or arrangements for contract work
3 should be made.

4 Q. And it was considered that these particular
5 kinds of projects no longer contributed to the
6 fundamental research effort of the B.A.T Industries
7 group; isn't that true, sir?

8 MR. CORRIGAN: Objection, lack of
9 foundation, form.

10 A. I cannot judge this from --
11 I don't have detailed knowledge and I cannot
12 judge this from this document.

13 Q. All right. Well can you turn back to Exhibit
14 496 which we looked at earlier.

15 A. 496.

16 Q. Looks like this, sir.

17 A. This one?

18 Q. Yes, sir.

19 A. 496, yes.

20 Q. If we turn to the second page of that document,
21 there's the heading "Implications for GR&DC." Right?

22 A. "Implications for GR&DC," yes.

23 Q. And that, according to this document, GR&DC
24 would no longer be the overall central research unit
25 of B.A.T Industries' tobacco interests; would it?

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1 MR. CORRIGAN: Objection, simply reading
2 from the document.

3 A. "GR&DC, thus, will no longer be the overall
4 central research unit of BAT Industries' tobacco
5 interests." That's what the document says.

6 Q. Well let me ask you this: When you became head
7 of Cigaretten Fabriken in Germany, did you understand
8 that GR&DC was still the central research unit of
9 B.A.T Industries?

10 A. When I joined, whether that was my
11 understanding? I didn't have that understanding when
12 I joined.

13 Q. I'm not sure you understood my question, sir.
14 When you became the head of Cigaretten Fabriken in
15 Germany, did you understand that GR&DC was still the
16 central research unit of B.A.T Industries?

17 A. I became chairman of B.A.T. Cigaretten Fabriken
18 in '97, I think in January '97, and --

19 Q. In '97?

20 MR. CORRIGAN: '87.

21 A. Nineteen -- sorry -- eighty-seven. Sorry. '87,
22 in '87. And I just have to find one more -- this
23 date here.

24 Q. I think the date of this document was April
25 25th, 1985.

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1 A. So in 1987 BATCO had reorganized GRDC -- GR&DC
2 already.

3 Q. All right. And it would be fair to say that at
4 the time you became the chief executive of Cigaretten
5 Fabriken in Germany, that the GR&DC was not the
6 overall central research unit of B.A.T Industries'
7 tobacco interests.

8 A. When I became chairman of B.A.T. Cigaretten
9 Fabriken in '87, I knew that my own company had a
10 research facility, I knew that BATCO had one, I knew
11 that Brown & Williamson had one, and also that Souza
12 Cruz had one.

13 Q. But by the time you became --

14 MR. CORRIGAN: Wait. Did you finish your
15 answer?

16 THE WITNESS: Yes, I did.

17 MR. CORRIGAN: Okay.

18 Q. By the time you became president -- or I'm
19 sorry, strike that.

20 By the time you became chief executive of
21 Cigaretten Fabriken in Germany, the B.A.T Industries
22 tobacco companies had developed a comprehensive and
23 coordinated R&D program that was decentralized; isn't
24 that true?

25 A. I became aware that research efforts were

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1 decentralized into the research facilities of the
2 operating groups, that is -- that is true, yes.

3 Q. All right. And as a matter of fact, it refers
4 at the top of the second page of this document, at
5 the end of the first complete paragraph, to "A
6 comprehensive, co-ordinated BAT Industries/BATCO R&D
7 programme which will be agreed with the CAC companies
8 by end of 1985," and that program was in existence
9 when you became chief executive of B.A.T. Cigaretten
10 Fabriken; wasn't it?

11 MR. CORRIGAN: Object to the form.

12 A. I cannot -- I cannot recall that.

13 Q. All right. Well do you have any information
14 that would dispute or -- strike that.

15 Do you have any information that would dispute
16 the fact that there had been a comprehensive,
17 coordinated B.A.T Industries/BATCO R&D program that
18 had been agreed upon by the CAC companies?

19 MR. CORRIGAN: Object to the form.

20 A. When I became chairman of the managing board of
21 B.A.T. Cigaretten Fabriken, I had no knowledge
22 whether this program was in place and I had no
23 knowledge whether it was not in place.

24 Q. All right. And as you sit here today, you
25 cannot dispute the fact that a coordinated B.A.T

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1 Industries/BATCO R&D program had been established; --

2 MR. CORRIGAN: Objection.

3 Q. -- can you?

4 MR. CORRIGAN: Object to the form.

5 A. I cannot confirm and I cannot dispute.

6 Q. Sir, are you aware of the fact that at the time

7 this reorganization took place in approximately late

8 spring of 1985, Brown & Williamson had been sued by

9 numerous smokers who had claimed they had been

10 injured by cigarettes produced by Brown &

11 Williamson?

12 MR. CORRIGAN: Object to the form.

13 A. I think I knew that Brown & Williamson was

14 involved in litigation in the U.S.

15 Q. And you learned that when you joined Cigaretten

16 Fabriken?

17 A. Whether I learned it then or even earlier, I

18 can't recall.

19 THE REPORTER: Just a moment, please. Off
20 the record.

21 (Discussion off the record.)

22 BY MS. WIVELL:

23 Q. Sir, was it decided at the time of the

24 reorganization that there were certain kinds of

25 projects involving fundamental research issues and

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1 biological activity of cigarettes that would not be
2 undertaken by any of the B.A.T Industries tobacco
3 companies?

4 MR. CORRIGAN: Object to the form.

5 A. I cannot recall.

6 Q. Well sir, you understand --

7 A. At that time was your question. At that time
8 was your question. I cannot recall.

9 Q. All right. As you sit here today, have -- I'm
10 sorry. Strike that.

11 Since that time up to today, have you learned
12 that there were certain kinds of projects after this
13 reorganization that were not undertaken because they
14 might provide a potential product liability?

15 A. I'm not aware of that.

16 MR. CORRIGAN: Objection.

17 Q. Sir, you are aware that there were certain
18 projects that were not seen as, quote, unquote,
19 company strategic by B.A.T Industries; isn't that
20 true?

21 MR. CORRIGAN: Object to the form.

22 A. I'm not aware of that. Cannot recall.

23 (Plaintiffs' Exhibit 702 was marked
24 for identification.)

25 BY MS. WIVELL:

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1 Q. Sir, showing you what's been marked as
2 Plaintiffs' Exhibit 702, this is a document which
3 begins with the Bates number 101432843; correct?

4 A. Correct.

5 Q. And the title is "Co-ordination of Group Tobacco
6 R&D Arrangements for Funding Group Research."

7 A. That's the heading of the document.

8 Q. And it's written by a gentleman by the name of
9 Collocott and another by the name of Alan Heard;
10 right?

11 A. That's correct.

12 Q. What did you understand Alan Heard's position to
13 be at or about the time of this document, which I
14 believe is August of 1986?

15 A. I'm not exactly sure what Mr. Heard's position
16 was at that time, '86.

17 Q. Did you learn later what Mr. Heard's position
18 was or what his responsibilities were?

19 MR. CORRIGAN: Objection to the form. You
20 mean as --

21 Did he learn later what Heard's position was in
22 August of '86?

23 MS. WIVELL: No.

24 MR. CORRIGAN: Well then the question's
25 ambiguous.

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1 A. I understand that later -- I don't know whether
2 he was at that time, '86, or 1st August '86 -- that
3 Mr. Heard made a contribution to coordinate research
4 work.

5 Q. You understood he had the responsibility for
6 coordinating research work; is that what you said?

7 MR. CORRIGAN: Objection, I'm not sure
8 that's exactly what he said, but --

9 A. I think that -- I think that's what he tried to
10 do. Whether that was his responsibility and by whom
11 he was given that responsibility, I don't know.

12 Q. Okay. Why --

13 Have you seen this document before, sir?

14 A. I can't recall.

15 Q. All right.

16 A. I don't -- don't think so.

17 Q. Why don't you take a few moments to review it.

18 A. I've read the document until page five, and not
19 the appendices.

20 Q. Sir, the document concerns coordination of -- of
21 group tobacco R&D and funding for that research;
22 doesn't it?

23 MR. CORRIGAN: Objection to the form.

24 A. The document is titled "Co-ordination of Group
25 Tobacco Research & Development, Arrangements for

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1 Funding Group Research," and having read the
2 document, it is mainly about funding.

3 Q. All right. Now you understand that after the
4 reorganization that took place in 1985, the group
5 research and development facility became part of
6 BATUKE; didn't it?

7 A. I think that is what the other exhibit said,
8 GR&DC, Southampton part of BATUKE, yeah.

9 Q. All right. And if we turn to page two of the
10 document, there's reference in the second paragraph
11 to types of research which were still deemed to be
12 group relevant but which were not seen as company
13 strategic; right?

14 MR. CORRIGAN: Object to the form.

15 A. The document says mainly that they are not seen
16 as company strategic by the parent company. I don't
17 understand to which company and which parent company
18 this relates.

19 Q. Now sir, the -- the parent company of BATUKE and
20 BATCO and B&W and Cigaretten Fabriken is B.A.T
21 Industries; isn't it?

22 MR. CORRIGAN: Object to the form.

23 A. The ultimate shareholder --

24 When was this document written? '86? The
25 ultimate shareholder of Cigaretten Fabriken -- B.A.T.

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1 Cigaretten Fabriken in Germany, Souza Cruz, BATCO,
2 was B.A.T Industries. The ultimate shareholder, yes.

3 Q. And the ultimate --

4 The ultimate shareholder of Brown & Williamson
5 was B.A.T Industries; wasn't it?

6 A. The ultimate shareholder, yes.

7 Q. And that is sometimes referred to as the parent
8 company; isn't it?

9 MR. CORRIGAN: Well objection. We already
10 established there are many parent companies in BAT
11 Group.

12 A. The parent company of B.A.T. Cigaretten
13 Fabriken, for example, was BATIG, or Gesellschaft Fur
14 Beteiligungen m.b.H. in Germany, so that is a parent
15 company, and it is not clear to me in this document
16 what they refer to as company and parent company.

17 Could have different meanings. Cannot detect it from
18 the document.

19 Q. Now one of the types of research that was seen
20 as not company strategic was biological -- biology
21 research; isn't that true, sir?

22 MR. CORRIGAN: You're asking him on the
23 basis of the document, or without reference to the
24 document?

25 She's chosen not to rephrase, so answer as best

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1 you can.

2 MR. BEZANSON: Object to the form.

3 A. What I understood from the previous document,
4 not sure whether it's in here, is that certain types
5 of research on the biological activity were
6 terminated and other parts were continuing.

7 Q. And the other parts that were continuing in the
8 biology area were parts that were not seen as company
9 strategic; right?

10 A. I cannot --

11 MR. CORRIGAN: Objection.

12 A. -- attest to that.

13 Q. Well you would agree, sir, that it was work that
14 was being done on a more limited basis but which did
15 not have sponsors.

16 MR. CORRIGAN: Well I object to the form.

17 There's no foundation for that.

18 A. I'm not sure that I understand the question.

19 Could I have it again, please?

20 Q. All right. Well after the restructuring when
21 there was supposed to be a decentralization of the
22 research, there still was some biology research being
23 done at what was now the BATUKE research center, and
24 one of the issues that this document addresses is
25 where to charge the funds or who to charge that

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1 research for. Isn't that true?

2 MR. CORRIGAN: I object to the form.

3 A. A table on page two of that document, "Work
4 Area," I think that is group tobacco R&D arrangement
5 of funding, and it distinguishes between
6 "Unsponsored" and "BATCo/BATUKE Sponsored," and then
7 gives a "Total."

8 Q. And there were some unsponsored biology charges
9 listed on that chart; weren't there?

10 A. Under "Biology," 163,000 pounds appear under the
11 column "Unsponsored."

12 Q. All right. Now the next page of the document
13 discusses some opportunities for funding the
14 unsponsored work; right?

15 MR. CORRIGAN: Objection to the form.

16 A. Page three of the document starts with the
17 sentence, "Our opportunities for funding this
18 unsponsored Group strategic work are," and then five
19 options are mentioned.

20 Q. And the third -- I'm sorry.

21 The third option was to "seek BAT Industries
22 central funding..."; right?

23 A. That -- that is what it says under number three.

24 Q. Did B.A.T Industries fund part of the research
25 that we've been talking about?

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1 MR. CORRIGAN: Objection, asked and
2 answered earlier today.

3 A. I don't know. I doubt it.

4 And the recommendation, which is on page five,
5 does not mention B.A.T Industries. Does not.

6 Q. Sir, showing you what's previously been marked
7 as Plaintiffs' Exhibit 646, this is a document that
8 begins with the Bates number 109068035; right?

9 A. Right. Correct.

10 Q. And it's entitled "1987 BATUKE Work Programme,
11 Project Areas Attributed to BAT Industries." Right?

12 A. That is -- that is what the heading says.

13 Q. Would you take a moment and -- and look it over.

14 Sir, there is a column under "Proposed Project
15 Funding" headed "BAT Industries;" right?

16 A. That is -- that is true, yes.

17 Q. And sir, reading this as a businessman, looking
18 at this particular document, does it suggest to you
19 that B.A.T Industries paid part of the project
20 funding for the projects which are listed under its
21 heading?

22 MR. CORRIGAN: Object to the form.

23 A. It does not suggest to me that the ultimate
24 shareholder of the tobacco companies, B.A.T
25 Industries, was meant to fund this research

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1 directly. I assume when they say "BAT Industries" --
2 this is an internal, I think, document from BATCO --
3 that they mean that other operating groups of B.A.T
4 Industries, not BATCO themselves. That is what I
5 would -- how I would understand that --

6 Q. Doesn't --

7 A. -- as a business -- as a businessman.

8 Q. All right. But it does not say that at the
9 top. It says --

10 A. It does not say. It is not clear. But it is
11 also not clear to me who made that proposal, whether
12 it was implemented or not; I just cannot detect that
13 from this document.

14 Q. And would it be fair to say that, as you sit
15 here today, you simply do not know one way or the
16 other whether B.A.T Industries paid for any of the
17 research that's listed under the heading here in
18 Exhibit 646?

19 MR. CORRIGAN: Objection, asked and
20 answered, twice.

21 A. I don't believe and I have no reason to believe
22 that B.A.T Industries P.L.C. ever funded research
23 directly, paid for research directly.

24 Q. Sir, do you know for a fact as you sit here
25 today that B.A.T Industries did not fund the research

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1 as listed on Exhibit 646 under its name?

2 MR. CORRIGAN: Object, asked and answered,
3 three times now.

4 A. I did not say that I know for sure, but it is my
5 evaluation, and I have no reason to believe that
6 B.A.T Industries funded research directly.

7 Q. Now sir, the Tobacco Strategy Review Team helped
8 coordinate the research that was done after the
9 reorganization took place at GR&DC in Southampton;
10 didn't it?

11 MR. CORRIGAN: Objection to form.

12 A. Whether it is right to say "coordinate," I don't
13 know. Maybe certain aspects have been discussed,
14 maybe the funding of research has been discussed at
15 the TSRT.

16 Q. Now sir, you were a TSRT member for quite a
17 number of years; weren't you?

18 A. I was.

19 Q. And you said earlier, I think, that you chaired
20 that committee; didn't you?

21 A. I didn't chair the --

22 MR. CORRIGAN: Objection to the use of the
23 word "committee." He didn't testify it was a
24 committee, he said it was a team.

25 MS. WIVELL: No, he said it was a

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1 committee.

2 THE WITNESS: No.

3 MS. WIVELL: You said it was a team,

4 actually.

5 MR. CORRIGAN: Objection repeated. You may
6 answer.

7 A. The TSRT, the Tobacco Strategy Review Team, I
8 was a member of for a number of years -- years. Did
9 I chair it before it was renamed TSG? I can't
10 remember.

11 Q. Did you chair it after it was renamed?

12 A. I chaired the Tobacco Strategy Group, yes.

13 Q. Sir, showing you what's previously been marked
14 as Plaintiffs' Exhibit 495, this is a document that
15 begins with the Bates number 201831134; --

16 A. Correct.

17 Q. -- right?

18 And it's entitled "Tobacco: Strategy Review
19 Team."

20 A. "Tobacco: Strategy Review Team. Tobacco:
21 Strategy Review Team," yes.

22 Q. Now this document sets forth the aims of the
23 group as it was originally constituted.

24 MR. CORRIGAN: I'm sorry, objection. "The
25 group" meaning -- referencing the team?

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1 MS. WIVELL: Yes.

2 A. "The first meeting of the team set up to review
3 the Group's strategies for its Tobacco activities,"
4 and it "was held on 14th December 1984." And then in
5 point one, "The terms of reference...."

6 Q. Now sir, let me repeat my question.

7 This document sets forth the aims of the group
8 as it was originally constituted; isn't that true?

9 MR. CORRIGAN: Object to form.

10 A. Can I read the document before I answer your
11 question?

12 Q. Fair enough.

13 MR. FRANKEL: There was an objection to
14 form to the pending question. If there isn't, there
15 should be.

16 MR. CORRIGAN: I make the objection.

17 A. I've read it.

18 Q. Sir, Exhibit 495 sets forth the aims of the
19 Tobacco Strategy Review Team as it was originally
20 formed; right?

21 MR. CORRIGAN: Object to the form.

22 A. The document itself says "The terms of reference
23 for the team were agreed as follows:

24 "The principal aims of the team will be to
25 ensure that the Group mounts a coherent strategic

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1 thrust in Tobacco, that there is effective technical
2 and marketing co-operation between the Group's
3 Tobacco businesses and that there is a unified
4 approach on Smoking Issues." That is what the
5 document says.

6 Q. All right. Well when you joined the team, did
7 you understand or learn what its objectives were?

8 A. I think, but I can't remember it absolutely
9 whether I was given the terms of reference and
10 whether the terms of reference had changed from the
11 original document.

12 Q. All right. Keeping that in mind, let me ask you
13 this: Would it be fair to say that when you joined
14 the Tobacco Strategy Review Team, you saw that its
15 principal purpose was to mount a coherent thrust in
16 tobacco, to make sure that there was an effective
17 technical and marketing cooperation between the
18 tobacco businesses and that there was a unified
19 approach on smoking issues?

20 MR. CORRIGAN: Object to the form.

21 Q. Let me rephrase the question.

22 Would it be fair to say that when you joined the
23 Tobacco Strategy Review Team, you learned that one of
24 its principal purposes was to mount a coherent
25 strategic thrust in tobacco?

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1 MR. CORRIGAN: Object to the form.

2 A. I cannot recall, when I joined the Tobacco
3 Strategy Review Team as -- in my function as the
4 chairman of B.A.T. Cigaretten -- managing board of
5 B.A.T. Cigaretten Fabriken, to have discussed a
6 coherent approach on smoking issues. I just cannot
7 recall that.

8 Q. Well did it become apparent to you that one of
9 the purposes of this group was to provide a unified
10 approach on smoking issues?

11 MR. CORRIGAN: Object to the form.

12 A. Can I have the question again, please?

13 Q. Yes.

14 When you became a member of the Tobacco Strategy
15 Review Team, did it become apparent to you that there
16 was -- one of the objectives of the group was to
17 provide a unified approach on smoking issues for the
18 various members of the B.A.T Industries tobacco
19 group?

20 MR. CORRIGAN: Objection to the form, and
21 also misstates the terms of reference as set forth in
22 the document.

23 A. Whether that became apparent to me, the smoking
24 issues, not that I recall. I do recall that when I
25 was a member that the main thrust of the Tobacco

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1 Strategy Review Team was to look into better
2 coordination of the tobacco companies within the
3 group. But whether --

4 No. That's my answer.

5 Q. All right. Well when did you become a member
6 of -- of the Tobacco Strategy Review Team?

7 A. Maybe 1988, maybe early 1989. Don't recall.

8 Q. All right. Now how often did the Tobacco
9 Strategy Review Team meet, sir?

10 A. Would have to check. Don't -- don't recall.
11 The document says twice a year. Have no -- no idea
12 whether they really met twice a year or -- or more
13 often.

14 Q. Well when you got on this -- involved in this
15 team, what did you understand you were getting
16 involved with?

17 MR. CORRIGAN: Object to the form and to
18 the tone.

19 A. There was an agenda, and I, as a chairman of the
20 managing board of B.A.T. Cigaretten Fabriken,
21 prepared my contributions to the discussion.

22 Q. Well --

23 A. As other members did. And I discussed it with
24 my -- my colleagues on the board on -- on -- on
25 the -- my colleagues from the boards of the other

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1 operating groups.

2 Q. Well at the time that you got involved with this
3 group, it was made up of several members of the board
4 of directors of B.A.T Industries and also the chief
5 executive officers of the tobacco companies in --
6 within the BAT Group; isn't that true?

7 A. I'm not sure whether that is true. When I got
8 involved, Mr. -- Sir Patrick Sheehy -- no, Mr. Sheehy
9 in those days, was chairman of the team. Who are the
10 other members when I got involved? Most probably Mr.
11 Pritchard, Mr. Bramley, Mr. -- don't know exactly who
12 from Souza Cruz, and I believe, whether that was then
13 or later on, a representative from Imperial Tobacco
14 Canada.

15 Q. Sir, showing you what's previously been marked
16 as Exhibit 523, this is a document entitled "Tobacco
17 Strategy Review Team" and bears the Bates number --
18 which is illegible; correct?

19 A. It is illegible. That's correct.

20 Q. All right. But it is Exhibit 523.

21 A. It's Exhibit 523.

22 Q. And it concerns the 10th meeting of the Tobacco
23 Strategy Review Team which was held on the 31st of
24 October of 1988.

25 A. 31st October 1988, yes.

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1 Q. Shows you were there; right?

2 A. Yes.

3 Q. Okay. And according --

4 MR. CORRIGAN: Excuse me. Can we go off
5 the record for just a second?

6 THE REPORTER: Off the record, please.

7 (Discussion off the record.)

8 MR. CORRIGAN: If I may just make a short
9 statement of clarification with respect to Exhibit
10 523. I do not know at whose deposition the document
11 was originally marked as an exhibit, but in the form
12 in which we are using it today it contains a page at
13 the end which did not belong to the document when it
14 was produced. The page I'm referring to bears a
15 legend at the bottom "BAT Industries - Texas AG
16 ACTION." This page does not follow in Bates-order
17 number with respect to the other numbers on the
18 exhibit as marked. It does, however, appear to be
19 another version of page two of the exhibit, with some
20 differences in terms of interlineation or handwritten
21 markings. So while I have no objection to continuing
22 to use the exhibit, I simply want to make the record
23 clear that it does not appear to be in the form in
24 which it was produced.

25 MS. WIVELL: Well, sir, I can't say that,

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1 and I'm not sure that sitting here today you can say
2 that.

3 MR. CORRIGAN: Yes, I can.

4 MS. WIVELL: You know how it was produced
5 to us?

6 MR. CORRIGAN: I can tell you that
7 production was made to you before Texas.

8 MS. WIVELL: Well I'm telling you I
9 haven't --

10 MR. CORRIGAN: *Ipsa facto.* Okay?

11 MS. WIVELL: -- I haven't a clue how this
12 page got --

13 MR. CORRIGAN: And I'm not suggesting
14 anything nefarious, Ms. Wivell. It's just obvious
15 that the page doesn't belong there. Somehow it got
16 marked in that way with the exhibit.

17 MS. WIVELL: All right. And I'm saying I
18 don't know how it got here, but it does appear to be,
19 as you said, the illegible page two of Exhibit 523
20 with what appears to be one bit of underlining or
21 something at the bottom of the page.

22 MR. CORRIGAN: Well there's apparently some
23 handwriting at the bottom of the page and also some
24 markings on paragraph 14 which do not appear on page
25 two of the exhibit.

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1 MS. WIVELL: Anyway, I -- like I said, I
2 haven't a clue how it got here. I believe it was
3 produced to us and in the week before we came over
4 here to take Mr. Broughton's deposition, and I
5 believe -- well it had to have been marked in this
6 form at the Broughton deposition since it's in the
7 court reporter's possession with this last page on
8 it, too, as the original Exhibit 523.

9 BY MS. WIVELL:

10 Q. Moving right along, sir, Exhibit 523 concerns a
11 meeting that you attended in October of 1988; right?

12 A. I -- I attended that meeting on October -- what
13 did you say? Oh, October 31st, 1988. And as the
14 minute one says, it was my first meeting.

15 Q. And after the Tobacco Strategy Review Team
16 meetings, you received minutes of what occurred at
17 those meetings; didn't you?

18 A. Yes.

19 Q. And this is the example of one of those sets of
20 minutes; right?

21 MR. CORRIGAN: Well only note my objection
22 based on a clarification of the record earlier
23 concerning the authenticity of the exhibit.

24 A. I received the minutes of the meetings I
25 attended, yes.

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1 Q. All right. Now sir, before you went to these
2 meetings, you received briefing books about the
3 subjects that would be discussed at the meetings;
4 didn't you?

5 MR. CORRIGAN: Object to the form.

6 A. I don't know whether briefing books, but we --
7 we received papers which would be discussed.

8 Q. And was there a paper for each one of the points
9 that was discussed?

10 A. Don't recall, but not necessarily.

11 Q. Now these minutes reflect that at this meeting
12 in October of 1988 the terms of reference or the aims
13 of the committee were discussed; right?

14 MR. CORRIGAN: Objection to the form of the
15 question. The minutes say what they say.

16 A. Minute two of that meeting says "Reviewing the
17 terms of reference, it was noted that the principal
18 aims of the team would be to ensure that the Group
19 mounts a coherent strategic thrust in Tobacco, that
20 there is effective technical and marketing
21 co-operation between the Group's Tobacco businesses
22 and that there is a unified approach on Smoking
23 Issues."

24 Q. And you have no doubt as you sit here today that
25 those topics were discussed at the meeting that you

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1 attended back in 1988.

2 MR. CORRIGAN: Object to the form of the
3 question?

4 A. I would have to read the whole document to make
5 sure that all of those things which were aimed to be
6 discussed were really discussed.

7 Q. Well sir, if it says here that the terms of
8 reference were reviewed, it would indicate that
9 actually happened at the meeting; wouldn't it?

10 MR. CORRIGAN: Object to the form of the
11 question.

12 A. "Reviewing the terms of reference, it was noted
13 that the principal" --

14 Yeah, it was restating the aims of -- of the
15 team --

16 Q. All right.

17 A. -- for -- for --

18 Q. I guess my point is you don't have any quarrel
19 with the fact that those topics were discussed at the
20 meeting; do you?

21 A. No.

22 MR. CORRIGAN: Object to the form of the
23 question.

24 A. No.

25 Q. Now it would be fair to say, then, wouldn't it,

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1 that you understood that one of the aims of this
2 particular team or group was to provide a unified
3 approach on smoking issues to be followed by the
4 various tobacco companies within the group.

5 MR. CORRIGAN: Object to the form,
6 misstates item two of the minutes.

7 A. The minute two says as part of the terms "that
8 there is a unified approach on Smoking Issues." That
9 is what the minute says.

10 Q. Well it says that that was the principal aim of
11 the team, would be to ensure that there was a unified
12 approach on smoking issues; isn't that true?

13 MR. CORRIGAN: Object to the form of the
14 question.

15 A. Whether the first part of the sentence really
16 relates to all -- to all three -- is it three?
17 Yeah -- I think three topics which were the concern
18 of the Tobacco Strategy Review Team, I'm not sure by
19 reading the minute. Could be, could be not.

20 Q. So are you suggesting that it was not the
21 purpose or one of the purposes of the Tobacco
22 Strategy Review Team to provide on behalf of the
23 group a unified approach on smoking issues?

24 MR. CORRIGAN: Objection to the form. You
25 keep using the word "provide," which -- which is

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1 prompting my objection because it's not in the
2 minutes here.

3 MS. WIVELL: All right. Well let me
4 rephrase the question.

5 Q. This minute says that the team should, quote,
6 "ensure that the Group mounts a coherent strategic
7 thrust in Tobacco," and then goes on to talk about
8 "and that there is a unified approach on Smoking
9 Issues;" right?

10 A. "...that there is effective technical and
11 marketing co-operation between the Group's Tobacco
12 business and that there is a unified approach on
13 Smoking Issues." That is what the minute says.

14 Q. And sir, it's your understanding, having served
15 on this committee, that one of the aims of this group
16 was to mount a coherent strategic thrust in tobacco
17 and provide a unified approach on smoking issues;
18 isn't that true?

19 MR. CORRIGAN: Object to the form.

20 A. I have no reason to doubt what is stated here,
21 that that is correct.

22 Q. Now the team was also concerned with removing
23 obstacles to effective marketing or technical
24 cooperation between the tobacco group companies;
25 isn't that true?

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1 A. That is what the next -- what -- what the first
2 sentence of the next --

3 MR. CORRIGAN: Paragraph?

4 A. -- paragraph of that minute says.

5 Q. And based on your experience as a member of this
6 team, it's true, isn't it, that the Tobacco Strategy
7 Review Team did try and make sure that there were no
8 obstacles to effective marketing or technical
9 cooperation?

10 MR. CORRIGAN: Object to the form.

11 A. I think the members of the team had this
12 objective that, if there would be obstacles, that
13 through discussing them, removing them, if that was
14 possible at all.

15 Q. Your counsel made an objection, so I have to
16 restate the question.

17 A. Uh-huh.

18 Q. And based on your experience as a member of this
19 team, isn't it true that the team did try and make
20 sure there were no obstacles to effective technical
21 cooperation between the group companies?

22 MR. CORRIGAN: Object to the form.

23 A. What my colleagues and I, being the heads of the
24 operate -- tobacco operating companies, major tobacco
25 operating companies, we tried to -- we tried to

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1 cooperate as far as possible, but in certain
2 instances our responsibilities for our operations,
3 under the legal requirements of the various countries
4 where we were operating, may have not made that
5 possible. Then -- then we had to observe that,
6 because that is the responsibility if you are running
7 an operating company.

8 Q. Now you referred in your last answer to your
9 colleagues, the heads of the tobacco operating
10 companies. Those colleagues included Mr. Pritchard,
11 who was the head of Brown & Williamson at the time;
12 right?

13 A. That is correct.

14 Q. And they also included the chief executive
15 officer of the Souza Cruz operation.

16 A. Of the tobacco operation of Souza Cruz. Souza
17 Cruz itself or -- there are holding companies, and
18 Mr. Saboia e Silva, as stated here, was head of Souza
19 Cruz Tobacco.

20 Q. And it would be fair to say that the entire time
21 that you were involved in the Tobacco Strategy Review
22 Team and then when the team changed its name, the
23 objectives, terms of reference that are listed here
24 under point two in Exhibit 523, never did change; did
25 they?

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1 A. Object to the form.

2 A. I'm not sure whether they changed later, but
3 those were the terms of reference when we -- when I
4 started on the Tobacco Strategy Review Team on 31st
5 October 1988.

6 Q. Well sir, you can't remember any changes --

7 A. I can't remember, but I will not exclude that
8 there were. But I just cannot remember.

9 Q. But you would agree that one of the things the
10 committee did throughout its existence was to provide
11 a unified approach on smoking issues for the tobacco
12 companies within the B.A.T Industries group.

13 MR. CORRIGAN: Object to the form. Object
14 to the use of the word "committee."

15 A. The Tobacco Strategy Review Team's -- those are
16 the terms of reference, and one of the terms -- one
17 of the terms is that there is a unified approach on
18 smoking issues.

19 Q. And that continued to be the case throughout the
20 life history of the committee or team or group, --

21 A. I can't --

22 Q. -- no matter what it was called; right?

23 MR. CORRIGAN: Well let me object to the
24 form, compound.

25 A. I cannot recall that it was changed.

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1 Q. Let me rephrase the question to try to meet
2 counsel's objection.

3 And that continued to be the case throughout the
4 life history of the Tobacco Strategy Review Team even
5 after it changed its name; right?

6 A. I cannot recall whether -- whether there were
7 changes made to the terms of reference later on.

8 Q. Now sir, one of the projects that is
9 discussed -- oh, I'm sorry, strike that.

10 One of the projects that was discussed at this
11 meeting was a project called AIRBUS; isn't that
12 right?

13 A. Is that on -- which -- on which --
14 Which minute are you referring to now?

15 Q. Well if you turn to the second page of Exhibit
16 523 you see reference at 11.(d) to Project AIRBUS.

17 A. Project AIRBUS.

18 Q. Right?

19 A. Brown & Williamson. Yes.

20 Q. All right. You recall Project AIRBUS; don't
21 you?

22 A. Could -- could I have the question again? I
23 didn't -- I didn't hear you.

24 Q. You recall Project AIRBUS; don't you?

25 A. I recall the -- the -- the name Project AIRBUS.

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1 Yes, I do.

2 Q. All right. You understand that Project AIRBUS
3 was in response to a project which had been
4 undertaken to develop a safer cigarette by the R. J.
5 Reynolds company; don't you?

6 MR. CORRIGAN: Object to the form.

7 A. What I recall is that Project AIRBUS was a
8 response to, I think, a cigarette launched by RJR
9 Reynolds in the United States. I think it was called
10 Premier.

11 Q. And Premier was supposed to be an alternative
12 nicotine-delivery system; right?

13 MR. CORRIGAN: Object to the form.

14 A. I don't know, because I have never worked in
15 RJR, what kind of intentions they had.

16 Q. All right. Well could you turn to the next page
17 of Exhibit 523.

18 A. Yes.

19 Q. Why don't you take a moment and review notes 15,
20 16, 17 and 18.

21 A. Which minutes?

22 Q. Fifteen, 16, 17 and 18.

23 A. Oh, 18, yes. I have to read 18.

24 I've read the minutes, yes.

25 Q. All right. Would you also take a look at 23 and

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1 24.

2 A. Twenty-three and 24?

3 Q. Yes, sir.

4 A. I've read it, yes.

5 Q. Now the Tobacco Strategy Review Team was aware
6 of the potential launch of Premier before R. J.
7 Reynolds took the product to market in the United
8 States; isn't that true?

9 A. I think that is true, yes.

10 Q. And you would agree, wouldn't you, that there
11 was a tremendous economic potential in being the
12 first to market a cigarette that had lower biological
13 activity?

14 MR. CORRIGAN: Object to the form of the
15 question.

16 A. I don't know whether Premier had a lower
17 biological activity.

18 Q. Well Premier aside, you would agree, sir,
19 wouldn't you, that there was a tremendous economic
20 potential for any tobacco company to be the first
21 into the market with a cigarette that had lower
22 biological activity than other cigarettes?

23 MR. CORRIGAN: Object to the form of the
24 question.

25 A. I cannot answer because I don't know whether

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1 Premier or any other cigarette had a lower biological
2 activity.

3 Q. All right. Now RJR eventually launched Premier
4 in the United States; right?

5 A. They launched, yes, through test markets, I
6 believe, in two states in the U.S., yes.

7 Q. Now the Tobacco Strategy Review Team agreed that
8 it was important to try and develop a project like
9 Premier.

10 A. It felt the necessity, although it was uncertain
11 at that point of time whether it would be
12 commercially successful, to have a response, if a
13 response would be necessary.

14 Q. Now sir, you told us earlier in the deposition
15 that it was important for the operating companies or
16 operating groups, because they were operating in a
17 competitive environment, in order to survive to make
18 a product which was demanded by the consumers; right?

19 A. I think I said that, yes.

20 Q. All right. In other words, the BAT Group knew
21 that it needed to give the consumers what they
22 wanted.

23 MR. CORRIGAN: Object to the form of the
24 question.

25 Q. Right?

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1 A. The operating companies, wherever they operate,
2 have to meet consumer demands, and that is what all
3 operating companies try to do.

4 Q. All right. And it's noted here that there was a
5 high level of public interest in products like
6 Premier; right?

7 A. Let me just find it.

8 Yes, it says that in minute 18.

9 Q. And you would agree, sir, that you and your
10 colleagues on the TSRT recognized that there was a
11 high level of consumer demand for a product like
12 Premier.

13 A. That is not --

14 MR. CORRIGAN: Object to the form.

15 THE WITNESS: Oh.

16 MR. CORRIGAN: That's not what he said.

17 That's not what the minute says.

18 A. The minute says "...there was a high level of
19 public interest," but it does not say that there was
20 a high level of consumer demand.

21 Q. All right. You would agree, though, that there
22 was a high level of public interest, and that was
23 recognized by the TSRT.

24 A. I have no doubt that the minute is -- minute is
25 correct that there was a high level of public

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1 interest.

2 Q. Now according to the minute, in 1988 half a
3 million pounds had been budgeted as an expenditure
4 for work on Project AIRBUS; right?

5 A. Project AIRBUS, half a million.

6 Q. Point 23.

7 A. Yes. Twenty-three. Twenty-four. Twenty-three.
8 Yeah, 0.5 million in 1988.

9 Q. So we're clear here, 0.5 million, or half a
10 million pounds, was spent in 1988 to develop or -- or
11 to work on Project AIRBUS; right?

12 A. As I understand it, the meeting was held on the
13 31st of October, and so the minute does not -- cannot
14 say whether this was spent in 1988 or whether it was
15 budgeted to be spent.

16 Q. All right. Fair enough.

17 Nonetheless, it was proposed and agreed to
18 increase the funding for Project AIRBUS to 3.88
19 million pounds for the year 1989; right?

20 MR. CORRIGAN: Object to the form of the
21 question.

22 Q. Let me rephrase the question.

23 It was proposed to increase the expenditure on
24 Project AIRBUS to 3.88 million pounds in 1989.

25 A. That is what the minute says, yes.

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1 Q. And -- and just so we're clear here, this
2 meeting took place in October of 1988, at the end of
3 the month.

4 A. Yes.

5 Q. And one of the reasons that it was proposed to
6 increase the expenditure to 3.88 million pounds was
7 because of the concern that there was public interest
8 in having a product like Premier.

9 A. I think it was the understanding that the launch
10 of Premier could be a commercial success, it was not
11 sure at that time, but it could be, and that the
12 operating companies should be able to have a response
13 to that, and that is why it was suggested to spend --
14 to increase the expenditure from 0.5 million in
15 '98 -- or '88, sorry, to 3.88 in '89.

16 Q. Now if we turn to the second page of the
17 document, at point 11 we see Mr. Heard had reviewed
18 research and development expenditures for
19 tobacco-related R&D; correct?

20 A. "Mr. Heard reviewed Research and Development.
21 Total Group expenditure on Tobacco-related R&D was 30
22 million. The majority of this was managed and funded
23 locally but there was a co-ordinated programme of
24 Group Strategic R&D accounting for around 10 percent
25 of total expenditure. Total expenditure in 1988 had

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1 been budgeted at 3.3 million split as follows:"

2 Q. And according to this, Project AIRBUS received
3 or was budgeted for 0.5 million pounds, or half a
4 million pounds; right?

5 A. That's what it says.

6 Q. Now sir, before this meeting Brown & Williamson
7 on behalf of the BAT Group companies had investigated
8 project Premier by trying to do literature searches
9 on nicotine toxicity and tar/nicotine ratios; hadn't
10 it?

11 MR. CORRIGAN: Object to the form of the
12 question.

13 A. Before suggesting a project, which would mean
14 that considerable amounts of money or of resource
15 would be spent, there would be research into the
16 project, yes.

17 Q. Now one of the other projects that is discussed
18 here is Project GREENDOT; right?

19 A. Yes.

20 Q. And what was Project GREENDOT?

21 A. Does the minute say that somewhere, or the
22 minutes?

23 Q. All right. Why don't you turn to the bottom of
24 page two.

25 A. Bottom of page two. Very difficult to read.

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1 Q. All right. You might want to turn to the last
2 page of the document and read the paragraph that's
3 there.

4 A. "Project Greendot"--

5 (Witness reads document.)

6 A. I've read the minute.

7 Q. You've read it?

8 A. I read -- I read the minute.

9 Q. I'm sorry.

10 A. Minute 14, yes.

11 Q. All right. Now Project GREENDOT was aimed at
12 trying to develop a cigarette that had very low tar
13 content but normal nicotine delivery; right?

14 A. That is what the minute says.

15 Q. And it, along with Project AIRBUS, were projects
16 designed to produce a safer cigarette; weren't they,
17 sir?

18 MR. CORRIGAN: Object to the form.

19 A. That is not said here in the minute. It was
20 product -- product development work.

21 Q. Well let me ask you apart from the minute. You
22 understood that Project AIRBUS was a project aimed at
23 trying to develop a safer cigarette; didn't you?

24 MR. CORRIGAN: Object to the form.

25 A. I said earlier there is no definition by the

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1 regulators what a safer cigarette is, so it cannot be
2 made as a specific fact for a certain project --
3 projects. What this is is really described here in
4 the -- in the minute. The aim was -- the specific
5 aim was of developing a cigarette with very low tar
6 but normal nicotine delivery.

7 THE WITNESS: On my -- actually on my copy,
8 "low tar content" is striked out.

9 MR. CORRIGAN: The witness is reading from
10 the last page.

11 THE WITNESS: Yeah, from the last --

12 Q. I'm sorry, sir. You're referring to point 14,
13 and I was asking you about Project AIRBUS.

14 A. Oh.

15 Q. Not Project GREENDOT.

16 A. Okay.

17 Q. So let me rephrase the question.

18 Project AIRBUS was a project that was
19 investigated by the Tobacco Strategy Review Team as a
20 potentially safer cigarette; isn't that true?

21 MR. CORRIGAN: Object to the form.

22 A. I don't recall that.

23 Q. And sir, isn't it true that Project GREENDOT was
24 also investigated as a potentially safer cigarette
25 because it was expected or hoped it would have a

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1 lower tar content?

2 MR. CORRIGAN: Object to the form and on
3 the grounds it's been asked and answered.

4 MS. WIVELL: Well let me re-ask the
5 question.

6 Q. Isn't it true that Project GREENDOT was also
7 investigated as a potentially safer cigarette because
8 it was hoped to have a lower tar content?

9 MR. CORRIGAN: Object to the form, object
10 on the grounds it's been asked and answered.

11 A. The Project GREENDOT was a project to lower the
12 tar content with normal nicotine delivery. That is
13 what it says. And it doesn't refer to any safer
14 cigarette.

15 Q. Well sir, isn't it a fact that Project AIRBUS
16 and GREENDOT were undertaken to try and reduce the
17 biological activity of cigarettes?

18 MR. CORRIGAN: Object to the form.

19 A. I can't find that here in the minutes, and if
20 they are not -- if that is not minuted, I don't think
21 it was the objective.

22 Q. Sir, what was Project WARSAW?

23 A. I don't know. WARSAW?

24 Q. WARSAW.

25 A. W-R --

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1 Q. W-A-R-S-A-W.

2 A. Don't know.

3 (Plaintiffs' Exhibit 703 was marked
4 for identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been marked as
7 Plaintiffs' Exhibit 703, this is a document that
8 begins with the Bates number 400583960; right?

9 A. Correct.

10 Q. Now would you take a few minutes and read this
11 document.

12 MR. BEZANSON: Excuse me. Is this a Cat II
13 document?

14 MS. WIVELL: No.

15 MR. CORRIGAN: It's not marked as such?

16 MR. FRANKEL: My copy is marked as a Cat II
17 document.

18 MS. WIVELL: Mine isn't.

19 MR. CORRIGAN: Well out of an abundance of
20 caution, let's -- let's treat it as Category II.

21 MS. WIVELL: No, I don't want to do that
22 because I will tell you that the last portions of
23 this document beginning with the third page have
24 already been marked in a non-confidential way in a
25 previous deposition.

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1 MR. CORRIGAN: Which deposition was that?

2 MS. WIVELL: The Colin Greig deposition.

3 MR. CORRIGAN: So the Greig exhibit, the

4 last -- which consists of the last two pages of this

5 document, has already been marked as a separate

6 exhibit?

7 MS. WIVELL: No.

8 MR. CORRIGAN: I'm sorry, then I

9 misunderstood you.

10 MS. WIVELL: I believe a portion, the last

11 three pages, --

12 MR. CORRIGAN: Oh, the last --

13 MS. WIVELL: -- has been marked. But this

14 has not been produced to us as a Cat II document and

15 I'm not going to go off the record and go through all

16 that folderol just to -- if someone has incorrectly

17 produced it to us. And it's not been produced --

18 MR. CORRIGAN: Well I'm not suggesting we

19 go off the record. I --

20 MS. WIVELL: No. We have to go off the

21 record and change tapes.

22 MR. CORRIGAN: Well so? That's no big

23 deal.

24 MS. WIVELL: Well it is a big deal.

25 MR. CORRIGAN: How difficult is that?

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1 MS. WIVELL: Quite difficult --
2 MR. CORRIGAN: Well I don't --
3 MS. WIVELL: -- in view --
4 MR. CORRIGAN: All we are doing is treating
5 it as Category II until we straighten it out. We're
6 not going off the record and doing anything other
7 than just changing the label for the transcript. I
8 mean --
9 MS. WIVELL: Well this was not produced to
10 us as a Category II document.
11 MR. CORRIGAN: Well all right. But I'm --
12 I'm stating that because we have a copy of the
13 document that has been marked as Category II --
14 MS. WIVELL: No, you have. I don't.
15 MR. CORRIGAN: All right. Well we'll give
16 it to you.
17 MS. WIVELL: Well I don't want it.
18 MR. CORRIGAN: But in the mean --
19 MS. WIVELL: I got ours.
20 MR. CORRIGAN: I know you don't want it,
21 but you can have it if you want it. In the meantime,
22 we're not going to go forward on an examination on
23 this document until we label it and treat it as
24 Category II.
25 MS. WIVELL: All right. We'll go off the

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1 record until we find out whether this was produced to
2 us as Category I or Category II.

3 MR. CORRIGAN: Well my suggestion is is
4 let's get the questions and answers in. We can, out
5 of an abundance of caution, treat it as Category II.
6 That way you get your questions and answers, and the
7 only issue is the -- is the -- is the section of the
8 transcript it's in. That's all.

9 MS. WIVELL: Well this has not been marked
10 Category II and I don't want to treat it as Category
11 II, and I object to this sudden -- all-of-a-sudden
12 assertion that it's a Category II document.

13 MR. CORRIGAN: Okay. Your objection is
14 noted. Now let's go back onto a Category II
15 transcript. That's no big deal.

16 MS. WIVELL: Well it is a big deal.

17 MR. CORRIGAN: Why?

18 MS. WIVELL: Because it takes time.

19 MR. CORRIGAN: How many minutes does it
20 take?

21 MS. WIVELL: About 10.

22 MR. CORRIGAN: Okay. Let's take the 10
23 minutes. You get 10 hours and 10 minutes of
24 examination. Okay?

25 THE REPORTER: Off the record, please.

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1 (Category II portion ensues.)
2 (Plaintiffs' Exhibit 704 was marked
3 for identification.)

4 BY MS. WIVELL:

5 Q. Sir, showing you -- no, strike that.

6 You understood that, when Premier was
7 introduced, it tasted bad; didn't it?

8 A. I understood that the taste was not accepted by
9 consumers.

10 Q. Did you try a Premier?

11 A. I did one.

12 Q. And it tasted terrible; didn't it?

13 A. It --

14 I can't recall how it tasted, but it didn't
15 taste like a cigarette.

16 Q. Okay. Fair enough.

17 Now showing you what's been marked as Exhibit
18 704, this is a document that begins with the Bates
19 number 575102898; right?

20 A. That's correct.

21 Q. And it's a Brown & Williamson Tobacco
22 Corporation research department file note entitled
23 "USE OF TOBACCO EXTRACTS AS A FLAVOR AND NICOTINE
24 SOURCE FOR PROJECT AIRBUS." Right?

25 A. That's what it says.

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1 Q. And the date of the document is December 19th,
2 1988.

3 A. December 19, 1988, yes.

4 Q. Now this exhibit concerns attempts to improve
5 the taste of smoke aerosol for Project AIRBUS;
6 right?

7 MR. CORRIGAN: Well let me object. You
8 only asked him to read the first paragraph and the
9 last paragraph of the document. Now you're asking
10 him about the whole exhibit.

11 MS. WIVELL: Fair enough. I'll rephrase.

12 Q. Sir, according to the abstract, the work was
13 done to try and improve the taste of synthetic smoke
14 aerosol for Project AIRBUS which was similar to the
15 Premier product; right?

16 A. What it says is, "The following exercise was
17 undertaken to improve the taste of a synthetic smoke
18 aerosol, for Project AIRBUS, similar to the R. J.
19 Reynolds PREMIER product." That's what it says.

20 Q. And this work, according to the last sentence,
21 shows that the smoke quality of Premier could be
22 improved with a minimum amount of work; right?

23 A. Says that the smoke quality of Premier can be
24 improved with a minimum amount of work. That is what
25 the file note says here.

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1 Q. And it goes on to note the fact that Premier was
2 launched with such poor smoke quality remains a
3 mystery; right?

4 A. That is correct, that is said in the document.

5 Q. Now, sir, was the Tobacco Strategy Review Team
6 informed that the smoke quality of Premier could be
7 improved with a minimum amount of work?

8 A. I don't recall that, but knowing that every
9 product can be improved, I wouldn't be surprised.

10 But with what kind of work, no idea.

11 Q. Was the Tobacco Strategy Review Team informed
12 that large amounts of free nicotine could be
13 transferred via Project AIRBUS and GREENDOT?

14 MR. CORRIGAN: Object to the form of the
15 question.

16 A. Could you repeat the question for me, please?

17 Q. Certainly. Let me rephrase it.

18 Was the Tobacco Strategy Review Team informed
19 that large amounts of free base nicotine could be
20 transferred via Project AIRBUS?

21 MR. CORRIGAN: Object to the form of the
22 question.

23 A. I don't recall that.

24 (Plaintiffs' Exhibit 705 was marked
25 for identification.)

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1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as

3 Plaintiffs' Exhibit 705, this is a document that

4 begins with the Bates number 570233905.

5 A. Correct.

6 Q. And it's entitled "R&D AIRBUS COLLABORATION - AN

7 INTERIM SUMMARY, REPORT NO: RD.2137 (RESTRICTED)."

8 A. Correct.

9 Q. The date is February 22nd, 1989.

10 A. Correct.

11 Q. Now if we turn to the second page of the

12 exhibit, there's a handwritten note that says,

13 "Airbus and Greendot were project names for work on

14 an RJR Premier-like project."

15 Based on what you know from serving on the

16 Tobacco Strategy Review Team, would you agree with

17 that statement?

18 A. AIRBUS was a project to develop a product which

19 could compete with Premier.

20 Q. Would you agree that GREENDOT was also a project

21 that was developed with the idea that it would be a

22 Premier-like product?

23 A. To compete with -- to compete with Premier, to

24 compete with the Premier product.

25 Q. So the answer is yes, GREENDOT was a product

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1 that was designed to compete with a Premier-like
2 product?

3 A. Designed to compete with a Premier-like
4 product? Yes.

5 Q. All right. Would you turn to the third page of
6 Exhibit 705. There is --

7 A. Third page.

8 Q. -- a summary. Would you take a moment and read
9 the first couple of paragraphs.

10 A. I've read it.

11 Q. Now sir, it gives us some information about the
12 work that had been done by BATCF, BATUKE, B&W and ITL
13 scientists; right?

14 A. That's what it says.

15 Q. Just so we're clear, BATCF is B.A.T. Cigaretten
16 Fabriken that you were CEO of; right?

17 A. I was chairman of the managing board of B.A.T.
18 Cigaretten Fabriken.

19 That is December 1988. That is correct.

20 Q. All right. And ITL is the Canadian subsidiary
21 of B.A.T Industries in the tobacco area; isn't it?

22 MR. CORRIGAN: Object to the form of the
23 question.

24 A. ITL, Imperial Tobacco -- I don't know what L
25 stands for. May be Limited.

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1 Q. And where is that company located, sir?

2 A. Imperial Tobacco, I recall two companies,

3 Imperial Tobacco of India, ITC, and IT -- well, and

4 then Imperial Tobacco of Canada. Most probably that

5 is Canada, but I can't detect it from here.

6 Q. All right. And it talks about work that was

7 done in December of 1988 to provide basic information

8 relative to the development of a potential prototype

9 alternative project for Project AIRBUS; right?

10 A. Alternative product design for Brown &

11 Williamson Project AIRBUS, yes.

12 Q. All right. And it also notes that, in addition,

13 work was undertaken to investigate aspects of how R.

14 J. Reynolds Premier product worked.

15 A. That is what it says.

16 Q. This was an interim report of the AIRBUS project

17 information; right?

18 A. This report is an interim summary of the major

19 findings which have been resulted from the AIRBUS --

20 AIRBUS topics investigated up to the beginning of

21 February 1989, is what the paragraph says.

22 Q. And if we look at the top of the next page, we

23 see, according to the document, that work was

24 continuing with an evaluation of the influence of

25 substrate temperature and length on tobacco transfer;

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1 right?

2 MR. CORRIGAN: "Nicotine transfer" it says.

3 Q. I'm sorry. Let me rephrase the question.

4 Work was continuing on the evaluation of

5 nicotine transfer for this project; wasn't it?

6 A. It says work was continuing with an evaluation

7 of the influence of substrate temperature and length

8 on nicotine transfer.

9 Q. Now sir, if we turn to the page that ends with

10 Bates number 910, --

11 A. Nine -- 910. 910, yes.

12 Q. -- there's a summary of percent of nicotine

13 transfers measured at a hundred degrees centimeters;

14 right?

15 A. Hundred degrees Celsius I believe.

16 Q. Yes, I'm sorry. Let me -- it's late in the

17 day. Let me rephrase the question.

18 At the top of the page that ends with Bates

19 number 910, there is a summary of the percent of

20 nicotine transfers measured at a hundred degrees

21 Celsius.

22 A. That's what I understand.

23 Q. And according to the information that's

24 presented here, nicotine free base transferred 83.6

25 percent over polypropylene fibers -- or fillers at

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1 that temperature; right?

2 A. Under heading "Substrate, (1), Polypropylene
3 Filters plus," and "Nicotine free base, (a), 83.6
4 percent." That is what it says. I -- what it means
5 I don't know. It's technical.

6 Q. All right. Would you turn to the page that ends
7 with Bates number 912.

8 A. 912. Yes.

9 Q. Would you read the conclusions to yourself.

10 (Discussion off the stenographic record.)

11 A. I've read it.

12 Q. Sir, this study concluded that at a hundred
13 degrees centimeters -- I'm sorry. It's late.

14 This study concluded that at a hundred degrees
15 Centigrade, generating nicotine from unburnt tobacco
16 was feasible.

17 A. "...and related substrates is feasible." That is
18 what it says here.

19 Q. And sir, did you understand as a member of the
20 Tobacco Strategy Review Team that it was feasible to
21 generate nicotine from unburnt tobacco?

22 A. Not sure about that. I don't understand the
23 whole paragraph, it's very technical, but if these
24 scientists say so --

25 Q. You would have no reason to dispute the fact

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1 that it wasn't feasible.

2 A. I have no --

3 Q. I'm sorry.

4 MR. CORRIGAN: Object to the form.

5 Q. I'm going to rephrase.

6 You would have no reason to believe that it was
7 not feasible.

8 A. I have no reason to believe, if they say so, it
9 is feasible or that it is not feasible.

10 MS. WIVELL: Why don't we end for the day.

11 THE REPORTER: Off the record, please.

12 (Deposition recessed at 5:28 o'clock p.m.)

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1 C E R T I F I C A T E

2 I, Richard G. Stirewalt, hereby certify
3 that I am qualified as a verbatim shorthand reporter;
4 that I took in stenographic shorthand the testimony
5 of ULRICH G. V. HERTER at the time and place
6 aforesaid; and that the foregoing transcript
7 consisting of pages 1 through 202 is a true and
8 correct, full and complete transcription of said
9 shorthand notes, to the best of my ability.

10 Dated at London, England, this 8th day of
11 September, 1997.

12

13

14

15 RICHARD G. STIREWALT

16 Registered Professional Reporter

17 Notary Public

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1 C E R T I F I C A T E

2 I, ULRICH G. V. HERTER, the deponent,

3 hereby certify that I have read the foregoing

4 transcript consisting of pages 1 through 202, and

5 that said transcript is a true and correct, full and

6 complete transcription of my deposition except:

7

8

9

10

11

12

13

14

15 ULRICH G. V. HERTER

16 Deponent

17

18 Sworn and subscribed to before me this day

19 of , 1997.

20

21

22

23 Notary Public

24

25 My commission expires .

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